



United States Department of State

Washington, D.C. 20520

OCT 15 2009

Dear Mr. Engel:

RELEASE IN FULL

Thank you for your letter of June 19 on behalf of Mr. Oscar Cerna, who reported that his investment was expropriated by the Government of Honduras. We sincerely regret the delay in responding to your inquiry, but are pleased that in the interim Mr. Cerna and his counsel were able to meet with the State Department's Legal Adviser and his staff of lawyers.

As you are aware, the Department has been very active over the last several years in trying to help Mr. Cerna resolve his investment claim against the Government of Honduras. Previous U.S. Ambassadors to Honduras, Larry Palmer and Charles Ford, personally raised Mr. Cerna's case at the highest levels of the Honduran government on several occasions, and urged the Honduran government to work directly with Mr. Cerna in resolving his claim. The current Ambassador to Honduras, Hugo Llorens, has also raised this issue with senior Honduran government officials, urging that it be resolved fairly and expeditiously. We will continue to encourage the Honduran government to settle its dispute with Mr. Cerna.

In response to your request that the Department refer Mr. Cerna's claim to the Foreign Claims Settlement Commission (FCSC), we must respectfully decline to do so. We believe the FCSC is not the appropriate venue for Mr. Cerna's claim. The FCSC may adjudicate categories of claims of U.S. nationals against foreign countries when directed by the Congress or at the request of the Secretary of State, usually in anticipation of the negotiation of a claims settlement agreement. However, there is no precedent for the FCSC to adjudicate a single claim against a foreign government in the absence of a claims settlement agreement. Moreover, unlike arbitration under a Bilateral Investment Treaty ("BIT"), decisions by the FCSC are not binding on foreign governments. Thus, a decision by the FCSC could further delay the resolution of Mr. Cerna's claim under existing legal procedures, including those procedures possibly available to Mr. Cerna under the U.S.-Honduras BIT.

REVIEW AUTHORITY: Charles  
Lahiguera, Senior Reviewer

The Honorable  
Eliot Engel,  
House of Representatives.

H2009 0806-003



-2-

We note that on several occasions, the Department has urged Mr. Cerna to exhaust all legal remedies that may be available to him through the Honduran court system or under the U.S.-Honduran BIT. Mr. Cerna has not yet done so, thereby limiting the Department's ability to advocate on his behalf. As we have explained, the exhaustion requirement and futility exception are rooted in international law.

By negotiating international investment agreements such as BITs, the United States provides U.S. investors the option to have their investment claims adjudicated in a forum for independent and impartial arbitration. We have repeatedly encouraged Mr. Cerna to consult with legal counsel to determine whether he has a remedy under the U.S.-Honduras BIT. Included in the information forwarded to you from Mr. Cerna was a legal opinion from private counsel that determined that his claim is covered by the U.S.-Honduras BIT. We recommend that Mr. Cerna consult with counsel about the process for initiating such a proceeding. International arbitration under the BIT, if available, would provide Mr. Cerna with a forum for dispute resolution that is independent of the Honduran legal system, an advantage that is typically welcomed by U.S. investors around the world.

We understand Mr. Cerna's frustration with regard to the potential costs associated with local proceedings or an international arbitration under a BIT. These considerations are not sufficient under international law to excuse an investor from first seeking the relief available to him in local courts or under the BIT.

We hope that this information is helpful to you in discussions with Mr. Cerna. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,



Richard R. Verma  
Assistant Secretary  
Legislative Affairs







United States Department of State

Washington, D.C. 20520

OCT 15 2009

Dear Mr. Chairman:

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The Honorable

Howard Berman, Chairman,  
Committee on Foreign Affairs,  
House of Representatives.



-2-

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Sincerely,



Richard R. Verma  
Assistant Secretary  
Legislative Affairs



Approved: L/CID: Jeffrey D. Kovar – ok

Drafted: <sup>PWP</sup> L/CID: Patrick W. Pearsall; ext 6-8970/9177515582  
DM 173143v1 L Control# 2009-311

IPS Control# H20090806=003 Representative Eliot Engel  
Constituent: Mr. Oscar Cerna

Cleared:

WHA/CEN:	CWebster	ok
WHA/CEN:	Gaby-Zambrano	info
D(S):	MAshraf	ok
P:	PAguilera	info
H:	JBulgrin	ok
H:	TKushner	info
L/EB:	LCaplan	ok
Post:	DBenning	ok
EEB/IFD/OIA:	BStilwell	ok



# CONGRESSIONAL CORRESPONDENCE CLEARANCE



H 2009.0806=003

Initial for clearance or return for edits with remarks. Pass on in numerical order with final stop in H/CCU. **PLEASE, DO NOT** return to drafting office without sending to or notifying CCU first.

**Name:** Engel, Berman (+88) **Date:** 09/22/2009 9:18 AM  
**Subject:** Writing on behalf of Oscar Cerna, whose investments was expropriated by the Government of Honduras.

	Initials	Date	
1. Hstaff – Log In	CH		
2. <del>Bemish</del> <i>Kusner</i>			Please change Mr. Berman to 'Mr. Chairman' and
3. Lang	AL	9/22	<del>move</del> move to #4. Thanks!
4. de la Iglesia	MT	10/5	
5. Zate	SL	10/6	
6. Schwab			
7. Adams	SL	10/6	
8. Turk	MT	10/6	
9. Polt			
10. Verma	RV	10/13	
11. Hstaff – Log Out			

## COMMENTS:

- Return to Nicholas Psychos x70609
- File is on the Classified System under the HCCU tasker folder.
- Comment:





**CHAIRMAN ENGEL LETTER TO SECRETARY OF STATE CLINTON, 6/19/09**  
**Requesting Referral of Cerna Case from State to Justice Department (FCSC)**  
**Member Signatures (Alphabetical Order):**

1.	ADAM PUTNAM (R-FL)	Financial Services
2.	ALBIO SIRE (D-NJ)	Foreign Affairs; T & I
3.	ALCEE L. HASTINGS (D-FL)	Rules; Select Intelligence;
4.	ALLEN BOYD (D-FL)	Appropriations; Budget
5.	ANDER CRENSHAW (R-FL)	Appropriations;
6.	BOB FILNER (D-CA)	T & I; Veterans' Affairs (Chair);
7.	BRIAN BILBRAY (R-CA)	Oversight & Gov't Reform; Science & Tech.; Veterans' Affairs
8.	CAROLYN MCCARTHY (D-NY)	Education & Labor; Financial Services
9.	CAROLYN MALONEY (D-NY)	Financial Services; Oversight & Gov't Ref; Joint Eco. (Chair)
10.	CHARLES A. GONZALEZ (D-TX)	Energy & Commerce; House Administration; Judiciary
11.	CHARLES B. RANGEL (D-NY)	Ways & Means (Chair); Joint Taxation (Vice Chair)
12.	CHRISTOPHER H. SMITH (R-NJ)	Foreign Affairs
13.	CLIFF STEARNS (R-FL)	Energy & Commerce; Veterans' Affairs
14.	CONNIE MACK (R-FL)	Budget; Foreign Affairs; T & I;
15.	CORRINE BROWN (D-FL)	T & I; Veterans' Affairs
16.	C.W. BILL YOUNG (R-FL)	Appropriations
17.	DALE KILDEE (D-MI)	Edu. & Labor; Natural Resources
18.	DAN BURTON (R-IN)	Foreign Affairs; Oversight & Gov't Ref; Veterans' Affairs;
19.	DANA ROHRBACHER (R-CA)	Foreign Affairs; Science & Technology;
20.	DANNY K. DAVIS (D-IL)	Oversight & Gov't Reform; Ways & Means
21.	DARRELL ISSA (R-CA)	Judiciary; Oversight & Gov't Reform (Rnk. Mem.)
22.	DAVID DREIER (R-CA)	Rules (Rnk.Mem.)
23.	DAVID WU (D-OR)	Edu. & Labor; Science & Tech.
24.	DEBBIE WASSERMAN SCHULTZ (D-FL)	Appropriations; Judiciary
25.	DIANE WATSON (D-CA)	Foreign Affairs; Oversight & Gov't Reform;
26.	DON YOUNG (R-AK)	Natural Resources; T & I
27.	DONALD A. MANZULLO (R-IL)	Financial Services; Foreign Affairs
28.	DONALD M. PAYNE (D-NJ)	Edu. & Labor; Foreign Affairs;
29.	DONNA CHRISTENSEN (D-VI)	Energy & Commerce; Natural Resources
30.	ED ROYCE (R-CA)	Financial Services; Foreign Affairs;
31.	ED WHITFIELD (R-KY)	Energy & Commerce
32.	EDOLPHUS TOWNS (D-NY)	Oversight & Gov't Reform (Chair)
33.	EDWARD MARKEY (D-MA)	E & C; Nat. Rescs; Select En. Indp. & G. Warming (Chair)
34.	<del>ELIOT L. ENGEL (D-NY)</del>	<del>Energy &amp; Commerce; Foreign Affairs</del>
35.	ELIJAH CUMMINGS (D-MD)	Oversight & Gov't Reform; T & I; Joint Economic
36.	ELTON GALLEGLY (R-CA)	Foreign Affairs; Judiciary; Natural Resources;
37.	ENI F.H. FALEOMAVAEGA (D-AS)	Foreign Affairs; Natural Resources
38.	GARY L. ACKERMAN (D-NY)	Financial Services; Foreign Affairs;
39.	GENE GREENE (D-TX)	Energy & Commerce; Foreign Affairs
40.	GENE TAYLOR (D-MS)	Armed Services; T & I;
41.	GINNY BROWN WAITE (R-FL)	Ways & Means
42.	GREGORY W. MEEKS (D-NY)	Financial Services; Foreign Affairs;
43.	GUS BILIRAKIS (R-FL)	Foreign Affairs; Homeland Security; Veteran's Affairs
44.	HENRY BROWN, JR (R-SC)	Natural Resources; T & I; Veterans' Affairs
45.	HENRY WAXMAN (D-CA)	Energy & Commerce (Chair)



## Member Signatures (Cont.)

46	<del>HENRY BROWN, JR (R-SC)</del>	<del>Natural Resources; T &amp; I; Veterans' Affairs</del>
47	<del>HENRY WAXMAN (D-CA)</del>	<del>Energy &amp; Commerce (Chair)</del>
48	<del>HOWARD BERMAN (D-CA)</del>	<del>Foreign Affairs (Chair)</del>
49	HOWARD COBLE (R-NC)	Judiciary; T & I
50	ILEANA ROS-LEHTINEN (R-FL)	Foreign Affairs (Rnk. Mem.)
51	JAMES MCGOVERN (D-MA)	Budget; Rules
52	JAMES MORAN (D-VA)	Appropriations
53	JEFF MILLER (R-FL)	Armed Services; Veterans' Affairs; Select Intelligence
54	JESSE JACKSON, Jr. (D-IL)	Appropriations;
55	JOE BACA (D-CA)	Agriculture; Financial Services; Natural Resources;
56	JOE WILSON (R-SC)	Armed Services; Education & Labor; Foreign Affairs
57	JOHN CONYERS (D-MI)	Judiciary (Chair)
58	JOHN J. HALL (D-NY)	T& I; Veterans' Affairs
59	JOHN LEWIS (D-GA)	Ways & Means
60	JOHN L. MICA (R-FL)	Oversight & Gov't Reform; T & I (Rnk. Mem.)
61	JOHN TANNER (D-TN)	Foreign Affairs; Ways & Means
62	JOSEPH CROWLEY (D-NY)	Foreign Affairs; Ways & Means;
63	KENDRICK B. MEEK (D-FL)	Ways & Means;
64	LINCOLN DIAZ-BALART (R-FL)	Rules;
65	MARCY KAPTUR (D-OH)	Appropriations; Budget;
66	MARIO DIAZ-BALART (R-FL)	Budget; Science & Technology; T & I;
67	MARK S. KIRK (R-IL)	Appropriations;
68	MARK SOUDER (R-IN)	Edu. & Labor; Homeland Security; Oversight & Gov't Ref.;
69	MARY BONO MACK (R-CA)	Energy & Commerce
70	MAURICE HINCHEY (D-NY)	Appropriations; Natural Resources;
71	MAXINE WATERS (D-CA)	Financial Services; Judiciary
72	NEIL ABERCROMBIE (D-HI)	Armed Services; Natural Resources
73	NORMAN D. DICKS (D-WA)	Appropriations
74	PATRICK KENNEDY (D-RI)	Appropriations; Oversight & Gov't Reform
75	PETE SESSIONS (R-TX)	Rules
76	PETER KING (R-NY)	Financial Services; Homeland Security
77	PHIL GINGREY (R-GA)	Energy & Commerce
78	RALPH M. HALL (R-TX)	Energy & Commerce; Science & Technology (Rnk. Mem.)
79	ROBERT I. WEXLER (D-FL)	Financial Services; Foreign Affairs; Judiciary;
80	RON KLEIN (D-FL)	Financial Services; Foreign Affairs;
81	ROSA DELAURO (D-CA)	Appropriations; Budget
82	SALOMON ORTIZ (D-TX)	Armed Services; T & I
83	SAM GRAVES (R-MO)	Agriculture; Small Business (Rnk. Mem.); T & I
84	SAM JOHNSON (R-TX)	Ways & Means
85	SANFORD D. BISHOP (D-GA)	Appropriations
86	SHEILA JACKSON LEE (D-TX)	
87	SHELLEY BERKLEY (D-NV)	Foreign Affairs; Ways & Means
88	TOM ROONEY (R-FL)	Armed Services; Judiciary
89	VERN BUCHANAN (R-FL)	Small Business; T & I; Veterans' Affairs

90 Jack Kingston (R-GA)

Appropriations



DEPARTMENT OF STATE CONGRESSIONAL  
CORRESPONDENCE TASKERIPS CONTROL# **H2009** 0806-003 ACTION BUREAU: LDATE: AUG 6 2009IPS:☒ SUBSTANTIVE ☐ CONSTITUENT☒ IMAGE ENTIRE DOCUMENT ☐ IMAGE ONLY FIRST ☐ PAGESBUREAU:BUREAU ACTION REQUESTED: RESPOND TO CCU **2** DAYS FROM: AUG 6 2009☒ REPLY FOR SIGNATURE BY Richard R. Verma, ASSISTANT SECRETARY,  
LEGISLATIVE AFFAIRS☐ ADDRESS ENVELOPE TO DISTRICT OFFICE☐ DIRECT REPLY TO CONSTITUENT BY OFFICE DIRECTOR WITH COPY TO  
CONGRESSIONAL OFFICE. PHONE 7-1608 WHEN COMPLETED☐ FYI ONLY/NO RESPONSE NECESSARY☐ REPLY FOR SIGNATURE DIRECTLY BY BUREAU☐ OTHER ACTION: \_\_\_\_\_FOR GUIDANCE/INFORMATION ON FORMATTING CONGRESSIONALS SEE:  
<http://www.legislativeaffairs.state.gov/index.cfm?fuseaction=publicdisplay&shortcut=JJPN>Due Date 8/10/09\*\*\*\*BUREAUS MUST MAKE TRANSFERS OF ACTION DIRECTLY WITH RECEIVING BUREAU'S FRONT  
OFFICE. The CCU has a listing of contacts. PLEASE NOTIFY CCU 7-1608 OF ALL TRANSFERS OF  
ACTION\*\*\*\*

11-2018

**Congress of the United States**  
**Washington, DC 20515**

RECEIVED  
JUN 23 - 6 P 2:40  
STATE DEPT

June 19, 2009

The Honorable Hillary Clinton  
Department of State  
2201 C Street, NW  
Washington, DC 20515

Dear Secretary Clinton:

We are writing to you on behalf of Oscar Cerna, a U.S. citizen, and his company Cemento America, S.A. (CEMAR). Mr. Cerna's investment in Honduras was allegedly expropriated by the Honduran government in 2004 to protect the government's commercial interest in a partially state-owned cement company substantially controlled by the Honduran military. We respectfully request that you refer this case to the Department of Justice's Foreign Claims Settlement Commission (FCSC).

Mr. Cerna has presented substantial evidence to us that his \$27 million cement plant was intentionally driven into bankruptcy by and expropriated through actions of the government of Honduras. Among the evidence Mr. Cerna cites are pleadings later filed by the Attorney General of Honduras largely admitting to the scheme. In furthering this complex plan, the government of Honduras apparently acted not only through the military, but also through its judicial system and agencies, including the Honduran tax authority and its intellectual property registry. In the process, not only was equipment of CEMAR seized, but the Honduran government pursued a dubious criminal prosecution of Mr. Cerna which was later thrown out by the courts. This evidence, including a legal analysis prepared by the law firm of Greenberg Traurig supporting Mr. Cerna's claim and many other key documents, is contained in a dossier accompanying this letter.

Last year, many of us wrote a similar bipartisan letter to your predecessor (dossier, section. 3). While the State Department declined our previous request, we believe that decision was based on a misreading of the case and Mr. Cerna's ability to exercise his rights under the Bilateral Investment Treaty.

Madame Secretary, while the State Department previously recommended that this case be dispatched to international arbitration under the BIT, Mr. Cerna is not a multi-national company with the resources needed to engage in such a costly four-to-eight year





The Honorable Hillary Clinton  
June 19, 2009  
Page two

litigation. Many, if not most, of the key facts in this case have already been established in various Honduran official findings and statements. These facts do not need to be proven again in a fruitless, expensive, dilatory, and endless arbitration.

Accordingly, we respectfully request your intervention in referring this case to the Foreign Claims Settlement Commission, as this is, in reality, Mr. Cerna's only available remedy.

We thank you for your kind interest in this most important case, involving a U.S. investor in a foreign country.

Sincerely,

Elind L. Emry

Connie Much

Schubert Rangel

Ida A. Watson

Norm Dicko

Alfred J. H. Hings

Ralph M. Hall

John D. H. Hings

Howard Cole

Carolyn McCorkle

Gregory A. H. Hings

Dana Robinson

*[Faint, illegible handwritten text]*

The Honorable Hillary Clinton

June 19, 2009

Page three

~~Joseph Crowley~~ ~~Carol Beckwith~~  
Bob Filner Michael Lindsey  
Howard S. Brown Debra Wasserman  
Shirley Jackson Lee Donald Marshall  
N. B. R. Sam Hiri  
Chris Smith Bob Bili  
Nancy Kaptur Joe Baca  
Boo Liane E. Watson

UNCLASSIFIED

The Honorable Hillary Clinton

June 19, 2009

Page four

~~Conf b m of~~ Gene Taylor

~~St. Lopez~~

Stanford D. b. Hoff.

~~[Signature]~~

Corrie [Signature]

~~Sam [Signature]~~

Donald M. Payne

John Hall

Jim Klein

Pete Sessions

~~[Signature]~~

El Pomar

Brian P. Bittner

Mark Loebe

Danny K. Davis

mid

David L. [Signature]

The Honorable Hillary Clinton  
June 19, 2009  
Page five

Gary L. Ackerman

Sam O'Quinn

Robert Wenzel

Don Burton

FL-17

Ellen Gallegly

Glenn Co. Station

Arthur C. Culp

Ed Whitfield

Rosa L. DeLauro

Jim Moran

Paul H. Ryan

Ami Yoon

Rep. ...

John Lewis

...

*Handwritten signature*



The Honorable Hillary Clinton

June 19, 2009

Page six

Hillary Clinton

Debbie Wasserman Schultz

Ging Brown - Waite

Mary McCormack

Joe Wilson

Henry Brown

Salomon B. Ortiz

Allen Boyd

Cliff Henry

Ronna M. Christensen

Timothy W. Lonsdale

Eda H. Loh

Paul Long

Patrick J. Kennedy

Alfred W. White

Edward J. Markey



The Honorable Hillary Clinton

June 19, 2009

Page seven

Elijah E. Turnings

Hee Hee

Ann Turner

Clara E. Kildce

Neil Abernombie

Mike C. Brydley

Phil Pingrey

Sam Johnson

Bill Posey

Vern Buchanan

Blaylock

Jeff Miller

Jim McLean

Jack Kingston GA-1

AM MB





## C O N T E N T S

NO. 1	U.S. INVESTMENT EXPROPRIATION (CEMAR)
NO. 2	GREENBERG TRAURIG (LEGAL ANALYSIS- 2008) U.S. AMB. PALMER TESTIMONIAL LETTER
NO. 3	U.S. CONGRESSIONAL PETITION & LETTERS (2003-2008)
NO. 4	HONDURAS REP. GUTIERREZ CRIMINAL COMPLAINT & *GOH REPORTS
5	PROL & PORTER MIGHTY STATE DEPT. LETTERS U.S. REPORTS HONORARY CONGRESS LETTERS
NO. 6	*GOH ILLEGAL PROSECUTION & CONFISCATION OF ASSETS (Human Rights Violation 2001-2002)
NO. 7	**PRICEWATERHOUSE COOPER HONDURAS IRS & PART-MILITARY CEMENT Co. COLLUSION (LEGAL ANALYSIS- 2009)
NO. 8	HONDURAS ARTICLES on CEMAR (2003-2009)

\*GOH- Government of Honduras

\*\* Prepared by Former Tax Division Chief









# STRATEGIC LOCATION

N Honduras

CENOSA  
• Plant

INCEHSA  
• Plant

• Tegucigalpa

EL SALVADOR  
• San Salvador

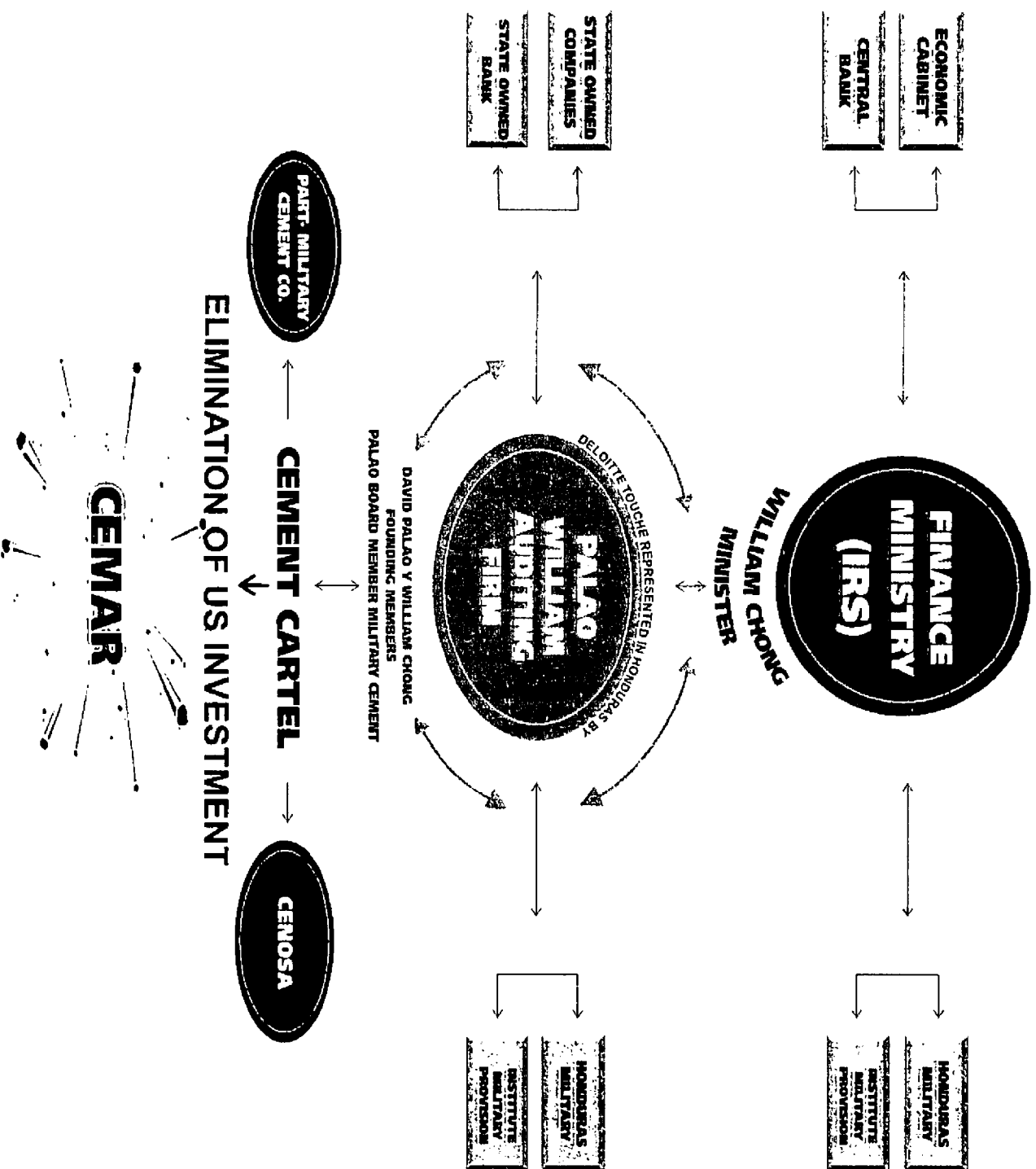
CEMAR  
• Plant

NICARAGUA





# Honduras IRS Collusion w/ Part-Military Cement Co., & Auditing Firm





# Honduras IRS Collusion w/ Part-Military Cement Co. & Auditing Firm

## Officials & Private Insiders Involved:

Ministry of  
Finance headed  
by Minister William  
C. Wong.

Minister William  
incorporates Honduras  
IRS into Finance  
Ministry.

Part-Military  
Cement Co. Board of  
Directors VP is the  
Chief of the Honduras  
Military & other Board  
Members are  
influential  
Congressman.

Part-Military  
Cement Co.,  
Shareholders  
Representative is  
David Palao.

Palao William  
Auditing Firm  
founders are  
David Palao &  
William C. Wong.  
They represent Deloitte &  
Touche in  
Honduras.

Palao William  
under Managing  
Director, David  
Palao, is the external  
auditors for the Honduras  
Military, the Part-Military  
Cement Co.,  
and the other cement  
cartel member.

Honduras  
IRS agents are  
also former  
associates of  
Palao William

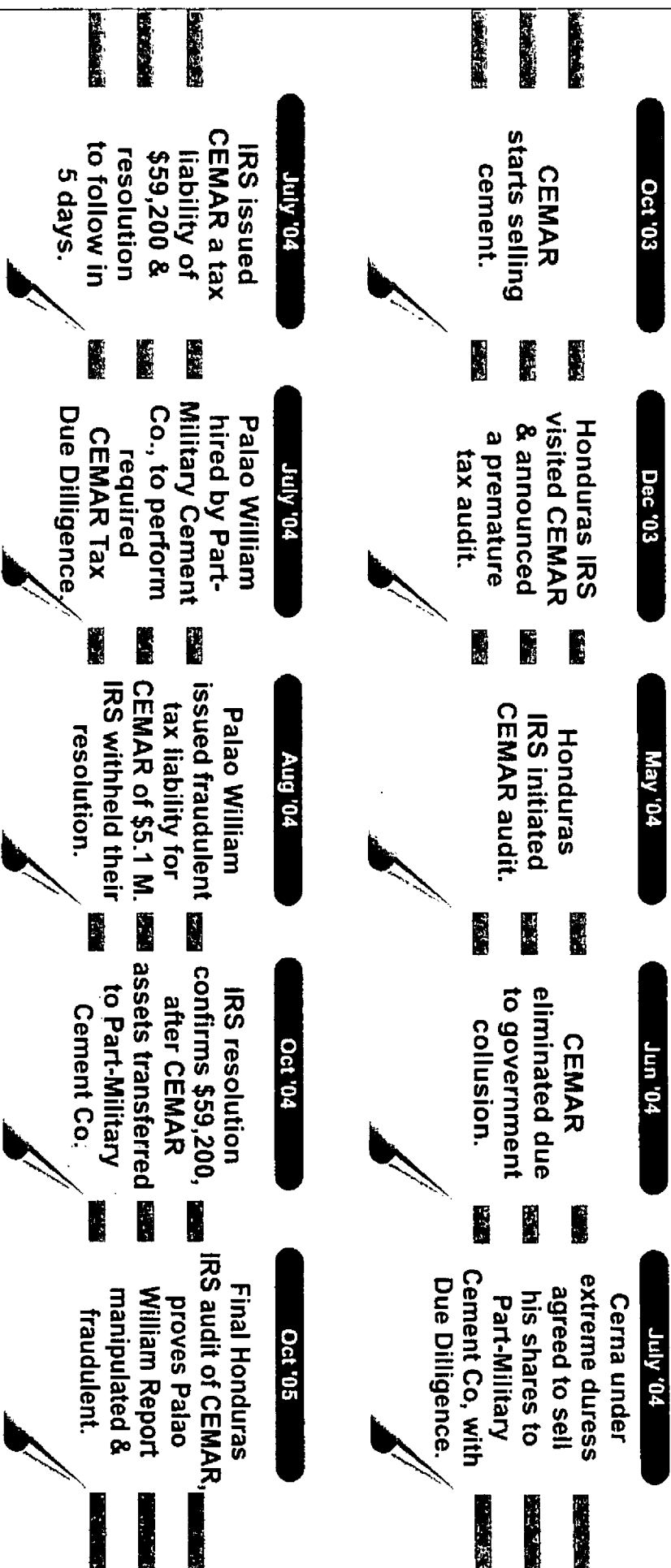
Honduras  
Anti-Corruption  
Agency in '05, implicated  
Minister William, David Palao,  
Palao William, Honduras  
IRS agents & the  
Part-Military Cement  
Co., for a \$10 M  
tax evasion in their  
cement interest,  
aiding in the elimination  
of CEMAR.

## Honduras IRS Intimidation, Harassment, Conflict of Interest & Corruption Led to Expropriation of the U.S. Investment (\$27 Million), CEMAR.





# Honduras IRS Collusion Scheme With Part-Military Cement Co. & Auditing Firm



The Illegal Involvement of the Government, through its Finance Minister, & the Honduras IRS, in collusion with the Part-Military Cement Co., and its auditing firm (Palao William) constitutes acts of corruption, abuse of authority, & influence peddling, all in violations of U.S. & Honduras laws, including the U.S. Foreign Corrupt Practices Act.

All involved in the elimination of the U.S. investment (\$27 Million), CEMAR.







**HONDURAS IRS, MILITARY & EXTERNAL AUDITORS- EXPROPRIATION OF A U.S. INVESTMENT (2004)**

1. The Government of Honduras (GOH), in protecting its assets and in collusion with a part-military owned cement co., expropriated the \$27 million U.S. Investment (CEMAR). The GOH scheme included employing powerful agencies, including Honduras IRS, Intellectual Property Registry and Judicial System, in a campaign of harassment, abuse of power and human rights violations. These included an arrest warrant and criminal charges against Cerna (dropped '02), and temporary confiscation of CEMAR assets without due process. The Honduras Anti-Corruption Agency implicated the Honduras IRS/Minister of Finance, the Military and its auditing firm for illegally reducing a \$10 million tax liability of the Military; in a report stating that these resources aided the Honduras Military in eliminating CEMAR from the market. The Military's cement activities have been at the core of many corruption scandals, with high-ranking GOH and Military officials implicated, as documented by the Honduras Attorney General. His office indicted several former IRS agents involved in the Military tax liability scheme. In Feb 09, the court validated the charges & is now on appeal.
2. From 2001-04, Oscar Cerna (a U.S. citizen & CEMAR principal owner), constructed a cement plant with U.S. technology, supplies and services, created 3,500 jobs, and paid \$4.5 million in taxes to the GOH. CEMAR superior product gained 20% market share and was authorized by GOH to export to the Central America region.
3. When CEMAR opened in '03, it was targeted by a predatory price war in which the GOH and the Military were active participants. Later, the Honduras IRS under the Minister of Finance and in collusion with his influential auditing firm (also auditors for the Military, a conflict of interest) committed a series of illegal and harassing acts against Cerna including threatening to charge him with serious tax violations. As in 2002, Cerna was again in fear for his personal freedom and safety. Cerna eventually succumbed to these attacks and shut down the plant, which was soon taken over by the part-military (42%) company in '04 at a fire sale price-completing the intended expropriation.
4. Since '04, Chairmen Dan Burton, Eliot Engel, Tom Lantos, Charles Rangel, and other Members, along with other U.S. officials have repeatedly raised their objections in the CEMAR case. GOH reports, discovered after CEMAR elimination documented the illegal involvement of present and former prominent GOH officials in the expropriation of CEMAR. Honduras President Zelaya and his predecessor continue to refuse to resolve this matter for over 5 years.
5. The U.S.T.R in 2006/07 affirmed that the Honduras cement duopoly "began to apply predatory pricing with the intention of eliminating [CEMAR] from the market, no subsequent prosecution was ever brought and the U.S. firm was forced to leave the Honduran market..." In Honduras, the Attorney General and other agencies also concluded in separate investigations (Sept-Oct '04) that CEMAR had been "immorally, illegitimately and illegally" eliminated from the market. U.S. Ambassador to Honduras, Charles Ford (2005-08), publicly stated that "The existing monopoly caused the closing of [CEMAR]... The Justice System in Honduras is not totally transparent and there is no assurance of getting fair justice."
6. In June '08, former U.S. Ambassador to Honduras (2002-05) Larry Palmer attested to Congress as to Cerna's claims of expropriation as outlined in a legal analysis by the Greenberg Traurig firm. He stated, "Mr. Cerna has no realistic remedy in Honduras, as the judicial system there is subject to influence from the same powers responsible for the improper acts in questions". Several Honduras governors, mayors and congressmen have corroborated Cerna's allegations.
7. In Sept. '08, Chairmen Engel, Rangel, Conyers and 65 Members of Congress wrote to the Secretary of State in support of Cerna's expropriation case, and requested the case be transferred to the Justice Department (FCSC). In Nov. '08, the request was declined based on faulty and misleading recitals of the key assertions and facts by State.
8. The State Department refuses to recognize the direct and illegal involvement by GOH and the Military, despite evidence of tax abuses by Honduras IRS in collusion with Military external auditors, and human rights violations. The Department erroneously misquotes assertions by Cerna of predatory pricing tantamount to expropriation. Our Embassy wrote to Rep. Burton, "Honduras had no legislation protecting Cerna". This is contrary to the Library of Congress Report 2008, on Honduras applicable laws (2001-04), requested by Rep. Ros-Lehtinen. The State Department is protecting GOH, despite Honduras' non-compliance with MCC "Corruption and Rule of Law" Criteria; and despite that MCC funds are currently benefiting the Honduras Military cement interest, the exact parties responsible for the elimination of Cerna's U.S. Investment. Ironically, present and former Honduras Minister of the Presidency (who are closely associated with the cement cartel and the Military) control the funds received from the MCC in Honduras, a serious conflict of interest.
9. The illegal involvement of the GOH through its Minister of Finance, and the Honduras IRS in collusion with the Military cement co. and its external auditing firm (Palao William) constitutes acts of corruption, abuse of authority and influence peddling. This abuse of power and political influence to validate illicit acts by the GOH is unfortunately a common practice in Honduras. The Military cement company could not have eliminated the U.S. investment from the Honduras market without the direct intervention of other prominent GOH officials (as referenced in the Honduras Anti-Corruption Report) thus refuting any argument by the GOH or the State Dept. that this was only a predatory price war. The GOH acts of expropriation against CEMAR without compensation are a violation of the U.S.-Honduras Treaty (BIT 2001), the U.S. Foreign Corrupt Practices Act, and other laws, and are "convincing evidence of systematic corruption" within the GOH. Cerna seeks justice and compensation for his losses and damages.

Oscar M. Cerna, 848 Brickell Avenue, S-1215, Miami, Fl 33131, 786-316-0933, Fax 786-316-0981, et@cermarusa.com









# GOH\* ILLEGAL OPERATIONS TO FUND MILITARY CEMENT CO. over \$163 MILLION

**Dec 71:**

Institute of Military Provision (IMP) created as part of Honduras Military, funding provided by national budget & losses financed by GOH. Managed by Chief of Honduras Military & other senior military officials.

**Oct 91:**

GOH fraudulent privatization of its cement Co. (INCEHSA) to another GOH agency, the Military (IMP), through questionable terms & conditions.

**Oct 92-03:**

IMP in default on government loan for INCEHSA. GOH restructures and forgives of majority of payments. Amount: +/- \$85 M.

**Jan 94:**

GOH buys cement from INCEHSA at inflated value as a credit for loan payment. Amount: +/- \$14.0 M.

**Feb 97:**

Honduras Anti-Corruption Commission Report concluded that the 91 privatization of INCEHSA was fraudulent & exclusively favored the Military (IMP); all high ranking officials should be prosecuted; the privatization should be annulled & GOH should recover HNL. 99 M. The Attorney General concurred, but criminal charges never pressed.

**Feb 98:**

IMP sells parts of its cement co. to Lafarge for \$50 M, retaining almost 50% but without GOH lien release & suspends GOH loan payments.

**Sep 01:**

Audit of IMP ordered by United Nation, following losses & mismanagement of all its companies (including its cement holdings) by senior military officers; audit reveals 56.3% loss of IMP equity.

**Jul 02:**

GOH conspired with Military partners to illegally reduce the IMP tax liability on its cement Co. Amount: +/- \$10 M.

**July 03:**

IMP owned & managed bank forced to close down, following audit by Banking & Insurance Commission: majority of other IMP owned companies shut down amid losses and allegations of corruption.

**Nov 03:**

IMP in default for 5 years on cement co. loan, gets additional extension from GOH. Amount: +/- \$4 M.

**\* Government of Honduras (GOH) actions & funding aided in the elimination of CEMAR in 2004.**

**TOTAL MILITARY HOLDINGS LOSSES ABSORBED BY HONDURAS UP TO \$1 BILLION.**



# HONDURAS GOVT. COLLUSION WITH MILITARY/CARTTEL IN CEMAR ELIMINATION

**Oct. 2003**



US Investment-CEMAR

7 BAGS	\$ 32.00
SAND	\$ 5.15
GRAVEL	\$ 7.78
ADDITIVES	(NOT NEEDED)

(Comparison of  
cost to produce  
1 MT)

**\$ 44,93**

**Feb. 2009**



Part-Military Cement Co.

9 BAGS *	\$ 59.13
SAND	\$ 8.57
GRAVEL	\$ 13.77
ADDITIVES	\$ 4.00

**\$ 85,47**

**COST TO HONDURAS PEOPLE +/- \$1 BILLION OVER 5 YEARS**

**90% is due to increase in price & decrease in cement quality in concrete.**

\* Lack of quality results in more bags. Prior to CEMAR up to 11 bags were required.



# Greenberg Traurig

Steven M. Schneebaum  
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March 11, 2008

Mr. Oscar Cerna  
Cernar & Associates  
848 Brickell Ave  
Suite 1215  
Miami FL 33131

Re: Expropriation case involving Honduras: synopsis of legal analysis

Dear Oscar:

Thank you for asking me to review the various aspects of your expropriation case against the Government of Honduras.

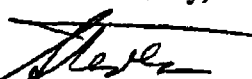
I am enclosing with this letter a synopsis of the results of my legal analysis. I conclude that the facts as you have presented them to me reveal a pattern of conduct violating the provisions of the bilateral investment treaty between Honduras and the United States. In the enclosed memorandum, I set out the reasons for that opinion, as well as the facts and law that underlie each separate instance in which I believe that a violation has occurred.

While the synopsis does not attempt a full, detailed elaboration of the narrative or of the arguments, I hope it is sufficient to establish the conclusion to a reasonable level of certainty. Please feel free to share it with anyone who might be of assistance in ensuring that justice is done, and that the wrongs done to you are remedied.

I would be pleased to participate in any subsequent developments in this case.

With best personal regards,

Yours sincerely,

  
Steven M. Schneebaum

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***Oscar M. Cerna v. The Republic of Honduras***  
**An Indirect Expropriation in Violation of International Law**

**Synopsis of the Legal Analysis**

**I. Introduction**

This memorandum outlines the claim of a United States citizen, Oscar M. Cerna, whose investment in a company, Cemento America S.A. de C.V. ("CEMAR"), was expropriated by the Government of Honduras. The indirect expropriation, for which Mr. Cerna received no compensation, involved a scheme designed and executed by the Government to protect its own commercial interests, and the interests of individual officials, in the two companies that dominated, and still dominate, the domestic cement manufacturing industry. As a result, Mr. Cerna lost the total value of his investment, and suffered additional economic and non-economic losses, for which he now seeks relief.

**II. The Facts**

**a) Mr. Cerna's investment in Honduras**

Together with his partner, Japan's largest cement company, Mr. Cerna between 2001 and 2004 invested some \$27.4 million in the creation of a new cement plant in the town of San Lorenzo, Honduras. The factory, which came online in October of 2003, had an initial production capacity of 371,500 tonnes per year. It included some \$18.8 million in U.S.-origin technology, materials, and equipment.

Immediately CEMAR's production demonstrated the capacity to acquire serious domestic market share (almost 20% in just five months). In 2004, CEMAR began export operations to El Salvador and Nicaragua, having received the necessary permits from the Government of Honduras. Its Cemento Uno brand was a demonstrably superior product to the varieties then for sale in Central America, exceeding market standards by more than 50% (as certified by a subsidiary of the U.S. Portland Cement Association).

**b) The benefits that CEMAR brought to the Honduran marketplace**

CEMAR offered its Honduran host more than just a better kind of cement, however. It offered jobs -- some 3,700 of them -- in an area of the country desperately in need of economic development. It promised to comply with sound environmental and job-safety practices. It paid more than \$4.5 million in taxes and contributions to Honduras. And CEMAR also offered a new attitude of entrepreneurship, driven by a successful businessman with a proven record, with access to the capital necessary to turn his investments into reality, and the acumen to make that





reality profitable for himself and his business partners, as well as to benefit those whose labor would keep the factory in operation.<sup>1</sup>

c) The controlling cement industry duopoly

For years, the cement industry in Honduras has been dominated by two firms: Cementos del Norte, S.A. (CENOSA, previously known as CEHSA), and Industria Cementera Hondurena, S.A. (INCEHSA). Both companies had been agencies of the Honduran Government until they were privatized in 1991-2: a very controversial program that resulted in millions of dollars in losses to the Government.<sup>2</sup>

CENOSA is largely owned by Honduran politicians and their powerful families. These included, until January 2008, the Minister of the Presidency, whose role is roughly comparable to the White House Chief of Staff in the United States.<sup>3</sup> This is the same individual who was President of CENOSA at the time CEMAR was entering the market. Several of the principal figures in CENOSA have been implicated in other incidents of corruption and abuse of power.

Since 1998, INCEHSA has been a partnership or joint venture between the Honduran Government, through its Military Pension Fund (IPM), and the French multinational enterprise Lafarge. IPM, which operates under a constitutional and legislative mandate, is presided over by the Chief of the Armed Forces, and is managed by powerful serving and retired military officers, owns 42% of the outstanding equity in INCEHSA. Like CENOSA, INCEHSA has connections with powerful Government officials. Its former General Counsel was the President's Chief Legal Counsel until January 2008, and is the current Minister of the Presidency. The Chief of the Armed Forces -- that is, the President of IPM -- is also the Vice President of INCEHSA's Board of Directors.

As a result of serious mismanagement, IPM was forced to shut down most of its commercial companies, resulting in millions of dollars of losses which by law were assumed by the Honduran Government. The IPM scandal was well documented in an independent audit performed under the auspices of the United Nations. INCEHSA therefore became the principal source of revenues for IPM, creating great incentive for IPM to support INCEHSA's dominant position in the cement market. This incentive made the influential Honduran military into a powerful opponent of any new competition in the market.

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<sup>1</sup> The benefits that CEMAR brought to the region were recognized by, among others, local authorities (including more than 25 mayors and a State Governor), as well as the leading local environmental organization.

<sup>2</sup> In 1997, the Honduran Anti-Corruption Commission detailed the fraudulent privatization of INCEHSA for the benefit of IPM, and recommended criminal charges against numerous ex-government officials, including former President Rafael Callejas.

<sup>3</sup> Among other things, the Minister of the Presidency oversees management of Millennium Challenge funds, now the largest single U.S. aid package to Honduras.



The Government has a significant commercial interest in the continued viability of its investment in INCEHSA, and its managers have a personal interest as well. And the Government has consistently acted to protect its investment, through the actions and omissions described in this memorandum, but also through questionable subsidies and debt forgiveness extended to the members of the duopoly. Nor is this an insignificant commercial contribution: over the years, the aggregate Government support for INCEHSA alone has reached more than \$100 million.<sup>4</sup>

d) Elements of the scheme to drive CEMAR into bankruptcy

The conspiracy to drive CEMAR into bankruptcy, and to ensure that it would not succeed in acquiring market share from its competitors INCEHSA and CENOSA, included a number of elements, each of which would be sufficient, and all of which together are more than adequate, to constitute indirect expropriation as a matter of law. These included a concerted campaign of predatory pricing of cement manufactured by the members of the duopoly. The Government does not deny that the sharp decline in cement prices that began just around the time that CEMAR was introducing its product into the market, was a result of predatory pricing. Indeed, the Attorney General, the Commerce Department, and others used that very terminology to describe their findings in a report on their investigation of the cement market conducted in 2004.

These denunciations, however, were window dressing. It was the very same Government that was ultimately responsible for the unfair competition, which was illegal under Honduran law. The excuse that no specific legislation existed to permit prosecution of these offenses (or, even better, to prevent them from occurring in the first place), rings hollow. Honduras does have an adequate statutory basis on which its officials could have proceeded to stop these practices, had it wished to do so.

The Government's collusion in the predatory price scheme also had its intended result on CEMAR's principal lender, which withdrew its \$10 million long-term financing commitment to the company. As a result, CEMAR was unable to honor its financial obligations, and was ultimately forced to sell its assets under duress and on extremely unfavorable terms to INCEHSA.

The Government also interfered in the process of registering intellectual property to ensure that CEMAR would not be able to trade confidently using its most valuable asset: its name, Cemento America S.A. de C.V. It did this in a way out of conformity with normal practices, and suggesting deliberate acts to impede what should have been a routine transaction.

Both CEMAR as a company and Mr. Cerna as its chief executive were harassed and intimidated by state authorities. In particular, the regional chief of the National Police purported to seize CEMAR's equipment, and the local agent of the National Prosecutor brought criminal charges

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<sup>4</sup> In 2002, the Government forgave an \$8 million tax liability of INCEHSA: a decision later declared illegal by the Anti-Corruption Commission. INCEHSA's auditing firm was also implicated in the report. These are the same auditors who in 2004 conducted a due diligence investigation of CEMAR. And in October 2003, the Government granted an illegal extension of its loan to IPM originally funded for the privatization of INCEHSA; despite the fact that the loan had been in default for over five years, according to a legal opinion by the Office of the Attorney General of Honduras.



against Mr. Cerna, not only despite the utter lack of merit to his position, but also in open disregard of administrative procedures applicable to such cases. And the case was permitted by the court to proceed, until the local officials were ultimately reined in by their superiors when the United States Embassy intervened.

All of these actions and omissions by the Government illustrate a pattern of conduct that caused millions of dollars in losses to CEMAR, and compromised Mr. Cerna's relationship with his strategic partner and shareholder from Japan. The Japanese partner ultimately terminated all technical and financial assistance, as well as supplies of key raw materials. Without the support of his partner, Mr. Cerna was left to fend for himself, with his entire investment now in serious jeopardy.

Individually and together, these measures taken by the Government of Honduras constituted an indirect expropriation of Mr. Cerna's investment in CEMAR, in violation of governing law, including the 2001 Bilateral Investment Treaty with the United States.

#### e) The constructive expulsion of CEMAR from Honduras

CEMAR was effectively bankrupted and forced out of the Honduran market in February 2004, after just five months of operation. Not yet aware of the scope of the conspiracy against him, Mr. Cerna under duress contracted to sell the Company's stock. The Government, however, was not finished abusing him. It engaged in more shady practices, in this instance delaying the final report of open tax liabilities, in order to ensure that the price Mr. Cerna received for his investment was sharply reduced.

This measure was taken out of more than sheer vindictiveness. The purchaser of CEMAR was none other than INCEHSA, the partially state-owned company. So the savings achieved improperly as a result of manipulation of the tax audit inured directly to the Government's benefit. Eventually, INCEHSA paid Mr. Cerna fire-sale prices for his company's assets, and he left the country, having lost nearly all of his investment.

### III. The Legal Framework

#### a) Content

The United States and Honduras are parties to a 2001 bilateral Treaty Concerning the Encouragement and Reciprocal Protection of Investment. The essence of the 2001 convention is the commitment of each party to extend national treatment to investors of the other nationality. In particular, the parties to the Treaty have agreed that neither will "expropriate or nationalize a covered investment either directly or indirectly through the application of measures equivalent to expropriation or nationalization," unless for a public purpose, and against "prompt, adequate, and effective compensation."

The provisions of that Treaty are directly enforceable in Honduras, which takes the "monist" approach to the incorporation of international law into its domestic system: international norms or treaty and custom do not require legislative implementation, according to the Honduran Constitution. It follows that the indirect expropriation of a covered investment is a violation of the laws of Honduras, as well as of the Treaty.



b) Standing to assert a claim

Mr. Cerna, as a citizen of the United States, is entitled to the full protection of the rights extended and recognized under the 2001 Treaty. His investment in CEMAR is a "covered investment" under the Treaty, because it is "an investment of a national . . . of a Party in the territory of the other Party." That CEMAR itself was incorporated in Honduras does not in any way affect the application of Treaty provisions, and therefore of Honduran law, which forbid the direct or indirect expropriation of covered investments. It was Mr. Cerna, in other words, whose investment was indirectly expropriated, and who has standing to invoke the Treaty as governing law intended to protect him from just such a result.

IV. The Elements of the Indirect Expropriationa) Predatory pricing by the cement duopoly

The textbook definition of predatory pricing is the lowering of prices by a monopolist (or by oligopolists in concert), without regard to costs of production, in order to drive a competitor from the market, with the losses then recouped by price increases once the scheme succeeds. Predatory pricing is unfair because both its intent and its effect are to reduce competition to the detriment of consumers. What CENOSA and INCEHSA did to CEMAR is a perfect illustration of this pernicious practice.

In 2003 and early 2004, before CEMAR's production facilities came on-line, the price of a metric tonne of cement in Honduras was approximately \$88.24 at the factory gate. CEMAR began commercial sales in September 2003. Between that time and February 2004, when CEMAR, unable to compete with the predatory prices and unable to overcome the other hurdles erected by the Government of Honduras, abandoned its efforts, the duopoly lowered prices to \$39.48 (a reduction of 55.3%), and openly threatened further cuts to \$13.82 (84.3%).

After the threat of having to compete with CEMAR was eliminated, the cartel members restored their prices to where they had been, reaching \$89.86 in August 2004. There was no market factor -- no shortage of raw materials, no sharp change in consumption -- that could account for such rapid and dramatic fluctuations.

In February 2007, the price of cement in Honduras was \$111.21/tonne, ex works. This represents a 281.7% increase over prices just three years before, and it is 805% higher than the prices the cartel announced that it was prepared to set if necessary to accomplish the goal of bankrupting CEMAR. The duopolists continue to enjoy the fruits of their illegal conduct to this day.

b) Interference with intellectual property registration

Under Honduran law, a company has the exclusive right to use the words contained in its corporate name, and no one else may interfere with that right by purporting to claim a proprietary interest in those words. Registration of the name is notice to all that the contents of the name, in its sectoral context, are off-limits.





And when CENOSA attempted to register the trademark "America," the Government accepted the application, not informing CENOSA (as it well knew) that another company in the cement sector -- CEMAR (Cemento America S.A.) -- had already laid claim to the word "America" as part of its corporate name. Nor did the trademark office notify CEMAR that a conflicting application had been filed.

In December 2003, once CEMAR successfully started operations, the Government accepted a complaint filed by CENOSA against CEMAR, alleging that it was illegally using the trademark "America," and seeking an injunction. CENOSA alleged that it was the legal owner of the "America" trademark, and also requested that the Government impose administrative sanctions for what it falsely labeled as anti-competitive practices committed by CEMAR. The Government deliberately and illegally withheld notification of this action to CEMAR, however, until August 2004, eight months later, after the Company had already ceased operations.

In addition to this assault on the name "America," on September 23, 2004, INCEHSA (the partially-state-owned cement company) fraudulently incorporated a corporation called "Cemento Uno de Honduras, S.A." The Mercantile Registry of Tegucigalpa registered the new corporation, although it did not meet all legal requirements. This act constituted an illegal dispossession of CEMAR's right to the exclusive use of its "Cemento Uno" registered trademark, and was performed at a time when the cement cartel had not yet consummated the stripping of CEMAR's assets.

c) False charges against CEMAR and Mr. Cerna

Naturally, much of the specialized heavy equipment needed to establish the state-of-the-art CEMAR production facilities had to be imported. A substantial portion of that equipment (valued at over \$13 million) was landed at the port of Henecan, in southern Honduras, in July 2001. Initially, it was cleared for temporary importation, with the required customs bonds duly deposited to secure re-export within six months.

Four months later -- in other words, during the time when there could be no argument about whether the equipment was properly in the country -- the National Police raided the CEMAR facility and seized the equipment. While the importing entity was CEMAR and not Mr. Cerna individually, Mr. Cerna was personally charged by the local prosecutor with tax evasion. The local judge not only admitted the charges, but reaffirmed the seizure. In a grave violation of human rights, he issued a warrant for Mr. Cerna's arrest.

The charges were entirely without basis. After the United States Embassy intervened at a very senior level, it emerged that there was not even a legal fig-leaf to cover the embarrassing illegality of these actions. Under Honduran law, the National Police has no authority to seize anything without a prior court order. And only the national prosecutor may initiate indictments for tax fraud, and he may do so only on request from the national headquarters of the tax authorities. Neither happened here. It appears that the regional police inspector and the local prosecuting agent took it on themselves to seize the CEMAR machinery and to file charges against the U.S. national whose company had imported it.



In February 2002, the national tax agency confirmed the legality of CEMAR's import activities, and extended the temporary importation for six months. CEMAR posted an additional re-exportation bond, and before the expiration of the period, paid all applicable duties and permanently imported the equipment into Honduras. In April, the court confirmed that the charges had been substantively baseless and procedurally improper. Nevertheless, the interference with CEMAR's start-up, as well as the personal attacks on Mr. Cerna, were both costly and intimidating.

d) Other measures to impede CEMAR, or to promote its competitors

Even after it became obvious that CEMAR was defeated and would have to leave the Honduran market, its tormentors would not give up their efforts to teach Mr. Cerna a lesson: the lesson that competition from foreigners was not welcome in the cement sector.

Not yet aware of the scope of the conspiracy against him, Mr. Cerna commenced negotiations to sell CEMAR to one of its competitors, INCEHSA, the partially state-owned cement company. These negotiations themselves, however -- unbeknownst to Mr. Cerna -- were just one more step in the conspirators' plans to destroy him. And the Government tax authorities played a particularly active role during this operation.

When signing the contract to purchase CEMAR, INCEHSA insisted that its own auditors conduct the customary due diligence. In early August 2004, the auditors "discovered" \$5.1 million of unpaid taxes owed by CEMAR (despite the results, a month earlier, of a Government audit that showed only \$60,000 in unpaid tax liability). When CEMAR demanded an official resolution of the tax audit needed in order to pay the liability and, more importantly, to rebut the auditors' due diligence "findings," the tax authorities refused to issue it.

The contract negotiations were really a trap, carefully designed by the Government and CEMAR's competitors and their auditors. INCEHSA dragged out the talks. Finally, using the "discovered" \$5.1 million of unpaid taxes as a premise, the purchaser canceled the contract and advised Mr. Cerna that there would be no further negotiations. Under that measure of additional duress, the hostile takeover was then redesigned as an assets purchase, rather than an acquisition of equity, and the total compensation package was effectively lowered by some \$12 million.

The auditors who oversaw this transaction were none other than the auditors of both INCEHSA -- the principal competitor of CEMAR -- and IPM, its shareholder.<sup>5</sup> The Government deliberately held back its final determination of the real tax debt as the closing progressed, ensuring that the auditors' view was accepted as correct. Two days after the deal closed, the Government issued a report stating that, in fact, the unliquidated tax liabilities of CEMAR had been on the order of \$60,000 after all.

In 2005 CEMAR requested a final audit, after which the tax authorities issued CEMAR a "clean bill of health."

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<sup>5</sup> At the time, the two principal partners of this auditing firm also served as the Minister of Finance and the shareholders' representative to the board of directors of INCEHSA, respectively. The latter was also the Managing Director of the auditing company.



## V. The Government's Involvement in the Scheme

It is fully to be expected that the position of the Government of Honduras with respect to these allegations will be not to deny them as a matter of fact, but rather to concede that they occurred, and to insist that there was no active involvement -- indeed, perhaps not even any acquiescence -- by the Government. The Government, in other words, will likely argue that, in its roles as both (direct or indirect) purchaser of cement and *parens patriae*, it was (like CEMAR!) an innocent victim of manipulation by the cement duopoly, which it was powerless to prevent.

The facts, however, belie that excuse, and show not only that the Government was well aware of the scheme, but that it was an active participant in it. International law recognizes the notion of "state responsibility" for acts performed, or omissions tolerated, by the agents of governments, as well as by governments themselves. On this record, it seems clear that the Government of Honduras did more than allow the series of wrongs of which Mr. Cerna was the innocent victim. The Government itself was responsible as a matter of fact and law.

### a) The predatory pricing

Mr. Cerna here relies on two types of proof: (a) argument that as a matter of law the Government of Honduras was obligated (but failed) to address what it acknowledged was a classic pattern of predatory pricing and abuse of a monopoly position, and (b) evidence that as a matter of fact the Government and its senior officials were intimately involved with the members of the duopoly.

As a matter of law, the Constitution requires that the Government assume responsibility for the entity that provides pensions and similar benefits to members of the Military (as well as the National Police and other entities). The Honduran Military pension fund, IPM, is a significant stakeholder in Lafarge-INCEHSA, pursuant to the constitutional mandate that it protect the futures of retired and disabled soldiers and sailors.

As a matter of fact, CENOSA was and continues to be substantially controlled by influential Honduran politicians, including highly-placed members of the Administration in office at the time of the events in question.

### b) The trademark registration

The failure of the Government's intellectual property registrars to permit CEMAR to protect its own name from abusive registration by its competitors was a direct action of the Government, and it can be shown that the action was inconsistent with well-established law and policy. Under Honduran law, the commercial name of an enterprise, duly registered, is presumptively to be protected. In this instance, however, not only did the Government entertain an application by a competitor, but its officials did not inform CEMAR that CENOSA had filed an administrative complaint against the Company, in December 2003, for allegedly making illegal use of a trademark that was part of its registered name. The notification of the complaint was not delivered to CEMAR until August 2004, several months after it had closed operations.



c) The persecution of CEMAR and Mr. Cerna

The abuse of CEMAR and Mr. Cerna by police officials -- including the false accusations of customs fraud -- represented actions procedurally and substantively unlawful in Honduras, as the courts ultimately found. The prosecution was ultimately dismissed as *ultra vires* the Government official who brought it (undoubtedly in an excess of zeal in support of what he knew was the Government program: to force CEMAR from the market by any means necessary).

The involvement in the Government in these measures, incidentally, justifies the claim that they constituted violations of Mr. Cerna's human rights, as well as of his rights under the Treaty and Honduran domestic law. Honduras is a signatory to all of the principal instruments guaranteeing basic human rights, including the International Covenant on Civil and Political Rights, and the Pact of San Jose (the Inter-American human rights treaty). All of these commit states parties to abandon the use of the criminal justice system for political ends, and vouchsafe the rights of those accused by the system to fair treatment, before, during, and after charges are brought against them. Only states are parties to these agreements, and only states can violate their provisions, as the Government of Honduras did here.

Once again, it can hardly be argued that the Government was a stranger to a plot of its own devising. The fingerprints of Government agents are all over the malicious prosecution of Mr. Cerna and CEMAR.

d) The other steps to drive CEMAR from Honduras

The auditors who performed the due diligence on CEMAR (under the contract to sell the Company) were also the external auditors for IPM and INCEHSA, this business relationship having been in place for many years. Obviously, the auditing firm's goal was to produce a report that would permit its valued client to reduce its outlays for the business it was purchasing.

But they were invaluablely assisted in their efforts by the inexplicable refusal of the tax authorities to rule definitively on the simple question of how much CEMAR owed in unpaid taxes. The tax agency's delay in certifying its original determination that the tax liability was about \$60,000 gave the auditors the opportunity to "find" a hugely inflated liability, without fear of rebuttal. The purchaser, balking at acquiring a business with such enormous debts, was able to gouge the moribund sellers to the tune of some \$12 million (by demanding that the transaction be restructured and closed as an assets purchase). Only after the closing did the tax agency admit that the debt had, in fact, been \$60,000 all along.

The Government profited from this scheme, through its ownership interest in the purchaser. And so the Government both provided the vehicle for the fraud, and reaped some of its benefits. The Government of Honduras was no innocent bystander, unable to prevent the sophisticated manipulation of events by private investors. It acted, deliberately, to protect what it appears to have seen as its commercial interests. And it did so in violation of the Treaty, as well as of numerous provisions of domestic and international law.





## VI. Damages

The lost investment in CEMAR was on the order of \$27.4 million. According to the Treaty, however, the proper measure of damages is greater than this. It is the fair market value of the expropriated asset, set as of a time immediately before the expropriation was consummated. In this case, the fair market value of CEMAR -- by any method of valuation -- would have been far greater in October 2003 than the investment needed to start it up. Moreover, Mr. Cerna is entitled under Honduran law to compensation for his non-economic losses, including the violations of his human rights:

## VII. Conclusion

What is briefly summarized in these pages is a cynical and deliberate attempt by a government and its officials to put their own interests above the national interest, even when doing so entailed violations of local laws, the national constitution, and binding treaties. But international law at the beginning of the twenty-first century has evolved to the point that it will not permit such abuses to succeed, or to go unpunished.

Failure to enforce the law, including in this instance the Bilateral Investment Treaty, would send a powerful signal to certain elite elements in Honduras that they are free to continue their corrupt practices with impunity. It would reward them for their rapacious conduct. And it would have an inevitable and destructive chilling effect on foreign investment in Honduras.

The investment of Oscar M. Cerna, a citizen of the United States, in Honduras was taken from him without legal justification and without compensation. For all of the foregoing reasons, as a matter of fairness, a matter of equity, and ultimately a matter of law, the Government of Honduras should be required to restore to Mr. Cerna the value of his investment, as well as to pay him compensation for the losses that he has suffered.

Steven M. Schneebaum  
GREENBERG TRAURIG LLP  
Washington, D.C.  
11 March 2008



Ambassador Larry L. Palmer

July 14, 2008

The Honorable Eliot Engel  
U.S. House of Representatives  
Washington, D.C. 20515

FILE

Dear Mr. Chairman:

As U.S. Ambassador to Honduras during 2002-2005, I became very familiar with the case of Oscar Cerna, a U.S. citizen, and his company CEMAR. Mr. Cerna claims that the cement plant he constructed in San Lorenzo, Honduras was indirectly expropriated, in a scheme involving senior government officials and an entrenched cement duopoly in which the Honduras military holds a substantial interest. I met with Mr. Cerna numerous times at the Embassy and at the plant. In response to inquiries from Members of Congress, I met with senior Honduras officials, to address Mr. Cerna's allegations of a government-led effort to drive him from the market, through malicious prosecution, harassment, temporarily confiscation of his plant without due process and other abuses of power.

I have reviewed Mr. Cerna's legal analysis prepared by the Greenberg Traurig firm in Washington, D.C., and can attest from my personal knowledge to the accuracy of the facts stated therein regarding Mr. Cerna's claim of indirect expropriation including violations of the U.S.-Honduras Bilateral Investment Treaty (BIT 2001). I am also familiar with letters from several past and present Honduras governors and mayors supporting Mr. Cerna's allegations, and citing the jobs, economic benefits and overall stimulus to their regions that have all been lost since CEMAR was forced out of the market.

The Honduras government has ignored this case for three long years. Mr. Cerna has no realistic remedy within Honduras, as the judicial system there is subject to influence from the same powers responsible for the improper acts in question.

I understand the State Department has verified a part of Mr. Cerna's claim (predatory pricing), but is not willing to recognize his more serious allegations of government abuses, including human rights violations. As the State Department will not certify any violations of BIT, Mr. Cerna is now asking the Congress to issue Report Language withholding any aid that would otherwise benefit the cement interests held by the Honduras military, until this case has been addressed in a satisfactory manner.

901 North Stuart Street, 10<sup>th</sup> Floor, Arlington, Virginia 22203  
Tel (703)-306-4301, Fax (703)-306-4363

1



Ambassador Larry L. Palmer

COPY

Needless to say, I am prepared to provide any information known to me in support of Mr. Cerna. I am very concerned that the State Department during its investigation of the case, never once contacted me for verification of any facts. I am also aware of at least 25 other pending cases by U.S. investors against the Honduras government.

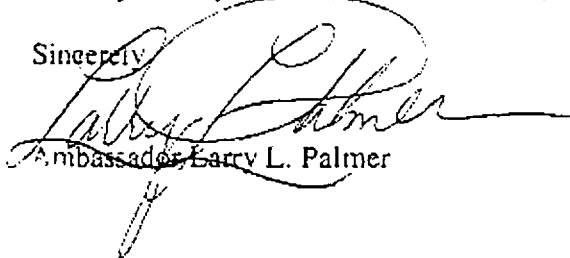
I was once quoted in the local press to the effect that CEMAR was a model for U.S. investment that would come to Honduras with the passage of CAFTA. Mr. Cerna invested \$27 million, created thousands of jobs and paid millions of dollars in taxes in Honduras. He invested considerable energies and resources in that country, in the spirit of our international treaties including BIT and now CAFTA.

While the State Department has now turned its back on Mr. Cerna, I am confident that the Congress, with its broader vision and in its oversight capacity, will insist through appropriate legislation that our treaties with Honduras are not so easily ignored and disrespected. Such action by Congress is not without precedent, in cases where U.S. taxpayers have been victimized by a foreign government's illegal acts and blatant disregard of our international treaties.

Finally, the CEMAR case should be viewed as establishing a precedent, towards our long-term policy goals of free trade and growth in Honduras and the region. Failure to enforce the law will only encourage certain elite groups in Honduras to continue their corrupt practices with impunity, and have a continued chilling effect on foreign investment in Honduras and the region.

Thank you for your attention to this matter.

Sincerely,



Ambassador Larry L. Palmer

901 North Stuart Street, 10<sup>th</sup> Floor, Arlington, Virginia 22203  
Tel (703)-306-4301, Fax (703)-306-4363

2



## Congress of the United States

Washington, DC 20515

September 16, 2008

The Honorable Condoleezza Rice  
Department of State  
2201 C Street, NW  
Washington, D.C. 20520

Re: Oscar Cerna vs. the Honduras government; Referral of Case to Justice  
Department (Foreign Claims Settlement Commission-FCSC)

Dear Madame Secretary:

We are writing to you on behalf of Oscar Cerna, a U.S. citizen, and his company Cemento America, S.A. (CEMAR). This \$27 million U.S. investment in Honduras was allegedly expropriated by the Honduras government in 2004 to protect the government commercial interest in a partially state-owned cement company substantially controlled by the Honduras military.

Our U.S. State Department, through former Ambassador Charles Ford and other U.S. officials, has during the past three years repeatedly raised its concerns over the CEMAR case, directly with the Honduras President and with other members of his administration. Many of our congressional colleagues have also expressed their concerns and objections. To date, there has been no meaningful response from the Honduras government.

In May 2008, Mr. Cerna met in Washington with the Honduras Ambassador to the United States and presented him with an extensive file. These documents substantiate the direct involvement of the Honduras government in a concerted effort to drive the U.S. investment from the Honduras market. They also provide confirmation of related human rights violations against Mr. Cerna and represent compelling evidence of acts by the Honduras government which would be considered wrongful under international law.

Many of the improper government acts have also been documented by the previous Honduras Attorney General, by the Honduras Ministry of Commerce, by the Honduras Ministry of Justice (in 2004), and by our United States Trade Representative (USTR) in 2006-07. In addition, several past and present Honduras Governors and Mayors, as well as Members of Congress have written in support of Mr. Cerna's assertions.





The Honorable Condoleezza Rice

September 25, 2008

Page two

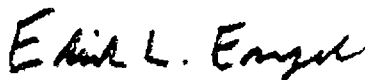
According to the Department of State, Honduras has "failed the corruption indicator required for continued funding" through the Millennium Challenge Corporation and is now under a remediation plan. Ironically, it is our understanding that the state-owned cement company which drove CEMAR from the market in the first place is now profiting as the MCC purchases its cement for road-building projects.

We would like to call your attention to the attached testimonial letter from Ambassador Larry Palmer (U.S. Ambassador to Honduras from 2002-05), in which he attested to Congress the validity of Mr. Cerna's claims of expropriation as outlined in the legal analysis prepared by the law firm of Greenberg Traurig (also attached). We believe that you will find Ambassador Palmer's letter to be both alarming and relevant to this case.

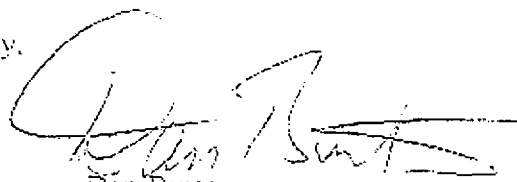
On August 7, 2008, Mr. Cerna met with the newly appointed U.S. Ambassador to Honduras, Hugo Llorens, and two State Department officials. According to Mr. Cerna, the discussions involved the multiple malicious actions taken by the Honduras government to cause the expropriation of CEMAR, thus reinforcing the impossibility of Mr. Cerna seeking justice in the Honduras courts. Mr. Cerna explained persuasively that international arbitration is not a realistic option due to the length of time to consider and rule on the case and the exorbitant cost it would impose upon him. At this meeting, Mr. Cerna suggested to the Ambassador the transferring of his case to the U.S. Justice Department to achieve his long-awaited equitable solution.

Considering the situation in Honduras and the strong evidence provided by Mr. Cerna, we respectfully request that this case be referred by you to the U.S. Justice Department (Foreign Claims Settlement Commission) for their review and disposition.

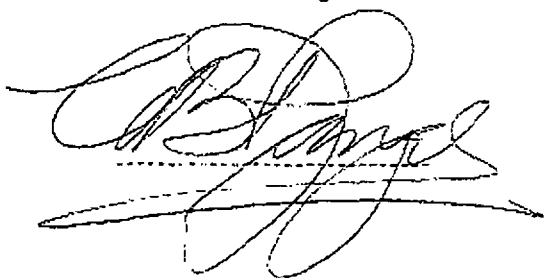
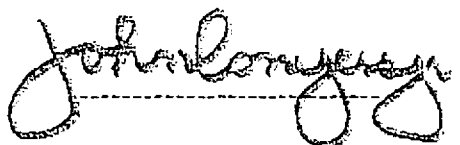
Sincerely,



Eliot L. Engel  
Member of Congress



Dan Burton  
Member of Congress



**SIGNATORIES (MEMBERS OF CONGRESS)**

**September 16, 2008, Letter to State Department Requesting Referral to Justice Department (FCSC);  
(Oscar Cerna vs. Republic of Honduras)**

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CHARLES B. RANGEL  
15TH CONGRESSIONAL DISTRICT  
NEW YORK

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GEORGE A. DALLI  
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JAMES E. CAPEL  
DISTRICT DIRECTOR

## Congress of the United States House of Representatives

June 16, 2008

His Excellency Manuel Zelaya Rosales  
President of the Republic of Honduras  
c/o Ambassador Roberto Flores Bermudez  
Embassy of Honduras  
3007 Tilden Street, NW #4 W  
Washington, DC 2008

RE: Oscar Cerna, D/B/A Cemar Co.

Dear Mr. President:

I am writing to you regarding Oscar Cerna and his company CEMAR. I know you have been contacted by many of my colleagues in Congress regarding Mr. Cerna's claim that his cement plant was indirectly expropriated by your government.

I have also been informed by the U.S. State Department that our Ambassador Ford and other U.S. officials have, during the past three years, repeatedly raised their concerns over this case directly with you, and with other Honduras officials. Although the events in question did not occur during your administration, your government's failure to address the concerns raised by my colleagues is troubling, because of its potential impact upon the economic relationship between our nations.

Mr. Cerna has briefed me on his recent meeting with Ambassador Bermudez in Washington, who kindly promised a response from your government, but was not able to offer any specific timeframe for the same. Similarly, Ambassador Bermudez indicated that he was not in the position to agree to setting a settlement conference for the resolution of Mr. Cerna's claim.

Thank you for your timely consideration of my request.

Sincerely,

CHARLES B. RANGEL  
Chairman, Committee Ways and Means

WASHINGTON OFFICE  
2354 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-3215  
TELEPHONE: (202) 225-4365  
FAX: (202) 225-0816

PLEASE RESPOND TO OFFICE CHECKED

DISTRICT OFFICE  
183 WEST 125TH STREET  
NEW YORK, NY 10027  
TELEPHONE: (212) 663-3900  
FAX: (212) 663-4277





CHARLES B. RANGEL  
15TH CONGRESSIONAL DISTRICT  
NEW YORK

COMMITTEE:  
WAYS AND MEANS  
JOINT COMMITTEE  
ON TAXATION  
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GEORGE A. DALLEY  
CHIEF OF STAFF

JAMES E. CAPEL  
DISTRICT DIRECTOR

## Congress of the United States House of Representatives

January 24, 2008

Ambassador Charles Ford  
US Ambassador to Honduras  
US Embassy Honduras, Unit 2900, Box 68  
APO AA 34022

Dear Ambassador Ford:

I am writing to follow up on my letter sent on December 11, 2007 regarding the apparent expropriation of the cement plant owned by Oscar Cerna, a principal owner of Cemento America, S.A. de C.V. (CEMAR) by the Government of Honduras.

I am concerned that this matter has not been addressed by the Government of Honduras especially since several letters from my colleagues in Congress have been written to the Government of Honduras and to the U.S. Embassy regarding Mr. Cerna's situation. I am concerned that the Government of Honduras has not rebutted the claim that they have violated the US-Honduras Bilateral Investment Treaty and that we have not heard from you regarding this matter. This can and will have negative effects on future U.S. investments in Honduras. Therefore, I request that you urge the Government to promptly resolve this issue with Mr. Cerna.

I look forward to hearing back from you about what measures the Government of Honduras has taken in regards to Mr. Cerna's allegations.

Sincerely,

A large, stylized handwritten signature of Charles B. Rangel, written in black ink, crossing over the printed name and title below it.

CHARLES B. RANGEL  
Chairman, Committee on Ways & Means

CBR: hlb

WASHINGTON OFFICE  
2354 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-3215  
TELEPHONE: (202) 225-4365

DISTRICT OFFICE  
163 WEST 125TH STREET  
NEW YORK, NY 10027  
TELEPHONE: (212) 663-3900



ROBERT MENENDEZ  
NEW JERSEY

317 SENATE HART OFFICE BUILDING  
WASHINGTON, DC 20510  
(202) 224-4744

ONE GATEWAY CENTER  
11TH FLOOR  
NEWARK, NJ 07102  
(973) 645-3030

208 WHITE HORSE PIKE  
SUITE 18-19  
BARRINGTON, NJ 08007  
(856) 757-5353

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United States Senate  
WASHINGTON, DC 20510-3004

December 21, 2007

His Excellency Jose Manuel Zelaya  
President of the Republic of Honduras  
c/o Ambassador Roberto Flores Bermudez  
Embassy of Honduras  
3007 Tilden Street, NW #4M  
Washington, DC 20008

Dear President Zelaya:

I am writing to you regarding the case of Oscar Cerna, United States citizen and principal owner of Cemento America, S.A. de C.V. (CEMAR).

I understand you are familiar with Mr. Cerna and his interest in resolving an issue regarding Cemento America, S.A. I also understand you have received several letters in support of Mr. Cerna from members of Congress.

The ability of United States citizens to be treated fairly and legally under bilateral investment treaties is very important to me. The ability of the Government of Honduras to resolve investment disputes in an open and transparent manner, even if the issue occurred during a previous administration, is an important component of attracting additional foreign investment. Based on information that I have received from Mr. Cerna, I am deeply concerned about the manner in which he may have been treated and I encourage you to meet with Mr. Cerna to discuss the details of his case and arrive at a prompt and just resolution using the appropriate legal channels.

Thank you for consideration of my request.

Sincerely,

  
ROBERT MENENDEZ  
United States Senator



12/07/2007 15:50 FAX 202 225 2035

HC INTL REL COMM

001/002

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U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515

TELEPHONE: (202) 225-5021  
[HTTP://WWW.FOREIGNAFFAIRS.HOUSE.GOV/](http://www.foreignaffairs.house.gov/)

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REPRESENTATIVE CAN MEMBER

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NICHOLAS D. PERDUE  
REPRESENTATIVE CAN MEMBER

WANDA GAGE  
REPRESENTATIVE CAN MEMBER  
WILLIAM CARROLL  
REPRESENTATIVE CAN MEMBER

December 7, 2007

His Excellency Manuel Zelaya Rosales  
President  
Republic of Honduras  
Tegucigalpa, Honduras

Dear Mr. President:

I am writing to you regarding the case of Oscar Cerna, U.S. citizen and principal owner of Cemento America, S.A. de C.V. (CEMAR).

You are no doubt already familiar with the details of the case from a series of recent letters from several of my colleagues in the U.S. Congress. It is not necessary to repeat those details here.

The case of CEMAR and how it was treated in your country, albeit not under your administration, is cause for grave concern. You have it in your power to use your good offices to right this wrong and not let it become a scar on our relationship with the government of Honduras. I very respectfully request that you intercede on behalf of Mr. Cerna, and I look forward to your reply.

Sincerely,



TOM LANTOS  
Chairman



HOUSE OF REPRESENTATIVES  
19TH DISTRICT, FLORIDA



COMMITTEE ON  
FOREIGN AFFAIRS

COMMITTEE ON  
THE JUDICIARY

COMMITTEE ON  
FINANCIAL SERVICES

December 21, 2007

**ROBERT WEXLER**  
CONGRESS OF THE UNITED STATES

His Excellency  
Jose Manuel Zelaya  
President of the Republic of Honduras  
c/o Ambassador Roberto Flores Bermudez  
Embassy of Honduras  
3007 Tilden Street, NW #4M  
Washington, DC 20008

Dear Mr. President:

I am writing with concerns regarding the mistreatment of an American investor by the Honduran government.

Specifically, I am referring to the case of Mr. Oscar M. Cerna, a United States citizen and the principal owner of Cemento America, SA de CV (CEMAR). In 2000, Mr. Cerna and his company were welcomed by the Honduran Government and their plans to build a cement plant were widely embraced. The plant created thousands of local jobs, stimulated the local economy and contributed over \$4.5 million in taxes to the Government of Honduras. However, this quickly changed, according to Mr. Cerna, as CEMAR was driven out of business by what appears to be a concerted effort by the previous Honduran government (the Maduro Administration) acting in collusion with the existing cement duopoly.

As you know, the U.S. Government provides Honduras with millions of dollars of foreign assistance each year. Most recently, the U.S. invited your nation to participate in the Millennium Challenge Corporation, which will provide over \$200 million to your country within the next five years. One of the main requirements to receive this funding is that Honduras comply with all applicable U.S. and international trade laws. Part of this commitment is to treat all U.S. citizens and American companies fairly and equitably and to ensure full protection and security and in no case accord treatment less favorable than that required by international law.

Although I understand that the events in question did not occur during your administration, it appears that no steps have been taken to remedy this ongoing case in the two years since it was first brought to your attention

PALM BEACH COUNTY:  
2500 NORTH MILITARY TRAIL  
SUITE 490  
BOCA RATON, FL 33431  
(561) 988-6302  
(561) 988-6423 FAX

WEST PALM BEACH:  
(561) 732-4000

WASHINGTON, DC:  
2241 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, D.C. 20515  
(202) 225-3001  
(202) 225-5974 FAX

[WWW.WEXLER.HOUSE.GOV](http://WWW.WEXLER.HOUSE.GOV)

BROWARD COUNTY:  
MARGATE CITY HALL  
5790 MARGATE BLVD.  
MARGATE, FL 33063  
(954) 972-6454  
(954) 974-3191 FAX







I know you are familiar with the details of this case and have read several letters sent to you from my colleagues in the U. S. Congress.

Mr. President, the unresolved CEMAR case reflects negatively on the record of the Government of Honduras and impacts bilateral relations. I respectfully request that you use your good offices to address this ongoing case.

Thank you for your prompt action to this matter, and I look forward to your reply.

Sincerely,



Robert Wexler

RW:ec



15TH CONGRESSIONAL DISTRICT  
NEW YORKCOMMITTEE:  
WAYS AND MEANS  
JOINT COMMITTEE  
ON TAXATION  
CHAIRMAN

CHIEF OF STAFF

JAMES E. CAPEL  
DISTRICT DIRECTOR

# Congress of the United States

## House of Representatives

December 11, 2007

Ambassador Charles Ford  
US Ambassador to Honduras  
US Embassy Honduras, Unit 2900, Box 68  
APO AA 34022

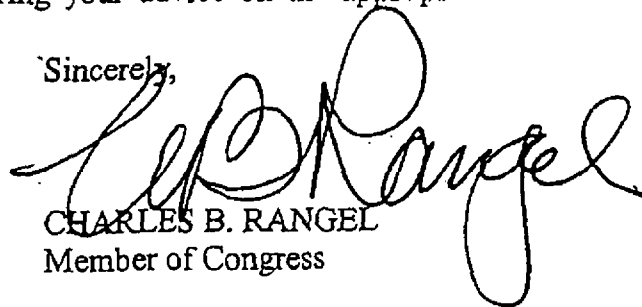
Dear Ambassador Adams:

I have been approached by my former colleague Congressman Benjamin Gilman and his client Oscar Cerna, a US Citizen resident in Miami who I am informed is an investor and successful businessman in the cement and mining industry in Nicaragua for over sixty years. Ben and Mr. Cerna are asserting that Cerna, doing business through his company Cemento America (CEMAR) in Honduras, has lost a substantial investment in Honduras as a direct result of the failure by the Government of Honduras to honor its obligations under the US-Honduras Bilateral Investment Treaty.

I know that you are familiar with these assertions and the Congressional interest that has been generated to seek an explanation from the Government of Honduras concerning its treatment of Mr. Cerna. I enclose copies of letters from my colleagues directed to the President of Honduras as well as a one page white paper that explains Mr. Cerna's claim that his property has been expropriated by the Government of Honduras. Please look into this matter and give me your assessment of the facts and circumstances to enable me to decide the most effective way for me to intervene in this matter.

I look forward to hearing your advice on the appropriate course of action.

Sincerely,



CHARLES B. RANGEL  
Member of Congress

CBR:gad

WASHINGTON OFFICE  
2354 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-3215  
TELEPHONE: (202) 225-4365

DISTRICT OFFICE  
163 WEST 125TH STREET  
NEW YORK, NY 10027  
TELEPHONE: (212) 863-3177



DANA ROHRBACHER  
46th District, California

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FOREIGN AFFAIRS

Ranking Member, Subcommittee on  
International Organizations, Human  
Rights and Oversight

Subcommittee on  
Asia, the Pacific, and  
the Global Environment

SCIENCE AND TECHNOLOGY

Subcommittee on  
Space and Aeronautics

Subcommittee on  
Investigations and Oversight



Congress of the United States  
House of Representatives

WASHINGTON OFFICE

2001 Rayburn House Office Building  
Washington, DC 20515-6346  
202/225-2415 FAX: 202/225-6141

DISTRICT OFFICE

101 Main Street, Suite 301  
Huntington Beach, CA 92648-5110  
Tel: 949/446-7444 Fax: 949/951-5526

South Bay 949/257-8462

Cell: 949/446-1122

July 28, 2008

His Excellency  
Jose Manuel Zelaya  
President of the Republic of Honduras  
c/o Ambassador Roberto Flores Bermudez  
Embassy of Honduras  
3007 Tilden Street, NW #4M  
Washington, D.C. 20008

Re: Human Rights Violations

Dear Mr. President:

Several Members of Congress have contacted you on behalf of Oscar Cerna, a U.S. citizen and the principal owner of Cement America (CEMAR). Their letters, with which I am familiar, have expressed congressional support for Mr. Cerna in his claims against the Honduras government, arising from the takeover of the CEMAR plant by a partially state-owned cement company substantially controlled by the Honduras military.

I am writing today to address one particularly disturbing element of Mr. Cerna's claims, i.e., that as a key part of this indirect expropriation, the previous Honduras government intentionally intimidated Mr. Cerna by committing a series of intentional and malicious acts against him that also rose to the level of human rights violations.

First, Mr. Cerna alleges that he was maliciously prosecuted and threatened with incarceration for alleged customs fraud (in connection with the importation of CEMAR equipment.) While the court ultimately dismissed the case, the judge found that the prosecutor had brought the charges and obtained an arrest warrant, all without proper authority or jurisdiction under local laws.

Mr. Cerna further alleges that his property (the CEMAR plant) was confiscated for several months during construction, also without due process of law.



ese acts would constitute violations of international laws and treaties protecting human rights. As dedicated advocates of human rights, I am deeply troubled to think that the Honduras Government may have used its justice system in violation of these binding laws and treaties and the principles they represent.

Mr. President, I respectfully request that you use your good offices to investigate whether Mr. Cerna was the victim of human rights violations committed by Honduras government officials. Thank you for your prompt action in this matter, and I look forward to your reply.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana Rohrabacher". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dana Rohrabacher  
Member of Congress





**CHRISTOPHER H. SMITH**

4TH DISTRICT, NEW JERSEY

**CONSTITUENT SERVICE CENTERS:**

1540 Kuser Road, Suite A9  
Hamilton, NJ 08619-3828  
(609) 585-7878  
TTY (609) 585-3650

108 Lacey Road, Suite 39A  
Walling, NJ 08759-1331  
(732) 350-2300

1373 Rayburn House Office Building  
Washington, DC 20515-3004  
(202) 225-3765

<http://chrissmith.house.gov>



**Congress of the United States**

**House of Representatives**

July 17, 2008

**COMMITTEES:**

**FOREIGN AFFAIRS**

**AFRICA AND GLOBAL HEALTH  
SUBCOMMITTEE**

*RANKING MEMBER*

**WESTERN HEMISPHERE  
SUBCOMMITTEE**

**COMMISSION ON SECURITY AND  
COOPERATION IN EUROPE**

*RANKING MEMBER*

**CONGRESSIONAL-EXECUTIVE  
COMMISSION ON CHINA**

*RANKING MEMBER*

**DEAN, NEW JERSEY DELEGATION**

His Excellency Jose Manuel Zelaya  
President of the Republic of Honduras  
Casa Presidencial  
Blvd. Juan Pablo II  
Tegucigalpa, Honduras

Your Excellency:

I am writing to you about a matter concerning Cemento America (CEMAR), whose principal shareholder, Oscar Cerna, is a U.S. citizen. I believe you have heard from other Members of Congress on this matter and I have been advised that Mr. Cerna recently met with Ambassador Roberto Flores Bermudez in Washington to discuss this issue.

By way of background, from 2001 to 2004 Mr. Cerna built and operated CEMAR in Honduras. According to Mr. Cerna, Honduran officials (prior to your administration) began restricting competition in the Honduran cement market with the purpose of protecting Honduran cement firms. This, Mr. Cerna states, resulted in discriminatory treatment of CEMAR, forcing CEMAR out of the Honduran cement market and causing the indirect expropriation of CEMAR's cement plant. Mr. Cerna states further that he was subjected to illegal prosecution and improper confiscation of CEMAR's assets without a warrant or court order.

As a member of the House Committee on Foreign Affairs who has been deeply involved in advocating and legislating on fundamental rights and rule of law issues, including matters of property confiscation, I respectfully request that you and/or the appropriate designee from your administration look into these issues.

Thank you for your time and consideration.

Sincerely,

CHRISTOPHER H. SMITH  
Member of Congress



**Congress of the United States**  
**Washington, DC 20515**

November 1, 2007

His Excellency Manuel Zelaya Rosales  
President of the Republic of Honduras  
C/O Ambassador Roberto Flores Bermudez  
Embassy of Honduras  
3007 Tilden Street, NW #4M  
Washington, DC 20008

Dear Mr. President:

We are writing to express our concern about the case of a United States Citizen, Oscar M. Cerna, the principal owner of Cemento America, S.A. de C.V. (CEMAR), a company that once offered to bring enormous economic benefits to Honduras and other countries in Central America. In 2001, Mr. Cerna invested more than \$25 million in Honduras and opened a new cement plant which brought thousand of jobs to the area.

Information has been presented to us that shows that CEMAR was driven out of business by what appears to have been a concerted effort by the government of your predecessor (the Maduro Administration), acting in collusion with the existing cement duopoly. The government and the two entrenched cement manufacturers appear to have engaged in conduct to restrict competition and to create artificial barriers to new competitors, which adversely affected the economy and harmed consumers. One of these two Honduran cement companies is partially owned by a Honduran Government entity.

Mr. Cerna has documented a series of acts and omissions, which together and possibly separately seem to rise to the level of indirect expropriation covered by the terms of the Bilateral Investment Treaty in effect between our two nations. These questionable, if not illegal measures included, among other things, a textbook predatory pricing scheme; interference with CEMAR's registration of its trademarks; and questionable charges of tax evasion and customs irregularities against CEMAR and against Mr. Cerna personally.

In each of these instances, Mr. Cerna alleges not that the Government of Honduras passively tolerated illegalities that it could have prevented, but that it actively participated in them.



His Excellency Manuel Zelaya Rosales

November 1, 2007

Page two

Through CAFTA-DR, the Millennium Challenge Corporation Compact between our countries, the Bilateral Investment Treaty (BIT) and other initiatives, including foreign debt relief, the United States has provided millions of dollars in direct and indirect aid to Honduras, and has encouraged its citizens to invest in your country. As you know, we are proud of the close relationship between our countries and strongly support the U.S. assistance program.

We are concerned, however, that in the CEMAR case, Honduras has not lived up to expectations under the BIT to treat American companies and citizens fairly and equitably. If American investment is to continue, U.S. citizens and companies will need to have confidence that Honduras will not discriminate against them but will provide an even playing field for competition. We, therefore, respectfully request that you use your good offices to right the wrong suffered by Mr. Cerna and CEMAR, and we look forward to your response.

Thank you very much for your consideration of our concerns.

Sincerely yours,



ELIOT L. ENGEL

Chairman

Subcommittee on the Western Hemisphere



DAN BURTON

Ranking Member

Subcommittee on the Western Hemisphere



RANKING MEMBER:  
COMMITTEE ON FOREIGN AFFAIRS

<http://foreignaffairs.house.gov/minority/republicans.htm>



**Congress of the United States  
House of Representatives**

**ILEANA ROS-LEHTINEN**  
18TH DISTRICT, FLORIDA

November 14, 2007

PLEASE RESPOND TO:  
2160 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-0918  
☐ (202) 225-3931  
FAX: (202) 225-5620  
<http://www.house.gov/ros-lehtinen>

DISTRICT OFFICE:  
8660 W. FLAGLER STREET, #131  
MIAMI, FL 33144  
☐ (305) 220-3281  
FAX: (305) 220-3291  
  
MONROE COUNTY:  
☐ (305) 304-7789  
MIAMI BEACH AREAS:  
☐ (305) 934-9441

His Excellency  
Jose Manuel Zelaya  
President of the Republic of Honduras  
C/O Ambassador Roberto Flores Bermudez  
Embassy of Honduras  
3007 Tilden Street, NW #4M  
Washington, DC 20008

Dear Mr. President:

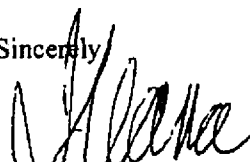
I am writing to you to express my concern about the case of Mr. Oscar M. Cerna, a South Florida resident and the principal owner of Cemento America, S.A. de C.V. (CEMAR). In 2001, Mr. Cerna invested approximately \$25 million to open a new cement plant in Honduras which brought thousands of jobs to the area.

According to documentation provided by Mr. Cerna, the CEMAR product was initially successful in your country and was authorized by the Government of Honduras to be exported to the rest of the region. However, subsequent actions taken by the Government of Honduras with regards to the Honduran cement industry may run contrary to the Bilateral Investment Treaty between our two nations. Congressmen Eliot Engel, Dan Burton, Lincoln Diaz-Balart, and Mario Diaz-Balart have personally written to you with similar concerns.

Although I understand that the events in question did not occur during your Administration, no steps have been taken to address Mr. Cerna's situation in the two years since it was first brought to your Administration's attention. Therefore, consistent with all applicable rules and regulations, I respectfully request that you meet with Mr. Cerna and his representatives to discuss these issues in hopes of finding an equitable solution that is agreeable to all parties involved.

Thank you for your consideration of my request.

Sincerely,

  
Ileana Ros-Lehtinen  
Member of Congress

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LINCOLN DIAZ-BALART  
21ST DISTRICT, FLORIDA

COMMITTEE ON RULES  
RANKING MEMBER,  
SUBCOMMITTEE ON  
LEGISLATIVE AND BUDGET PROCESS

CO-CHAIRMAN OF THE  
FLORIDA CONGRESSIONAL DELEGATION

HOUSE POLICY COMMITTEE  
CO-CHAIRMAN,  
SUBCOMMITTEE ON LIBERTY

COMMITTEE ON  
INTERNATIONAL RELATIONS  
(SENIORITY RETAINED)

ASSISTANT REPUBLICAN WHIP

Ambassador John J. Danilovich  
Chief Executive Officer  
Millennium Challenge Corporation- MCC  
875 Fifteen Street NW  
Washington, D.C. 20005



**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-0921  
December 19, 2007

PLEASE REPLY TO:  
WASHINGTON OFFICE:

☒ 2244 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-0921  
(202) 225-4211

DISTRICT OFFICE:

☐ 8525 N.W. 53RD TERRACE  
SUITE 102  
MIAMI, FL 33168  
(305) 470-8565

Dear Ambassador Danilovich:

I am writing to you in reference to the case my constituent, Oscar M. Cerna, the principal owner of Cemento America, S.A. de C.V. (CEMAR), a company which made substantial investments in Honduras, and yet was allegedly driven out of business by what appears to be a concerted effort by the previous government of Honduras acting in collusion with the existing cement duopoly, in which the Government holds a significant ownership interest.

According to Mr. Cerna, the Government of Honduras and the two Honduran cement manufacturers engaged in conduct to restrict competition and to create artificial barriers to new competitors such as CEMAR. These actions adversely affected U.S. economic interests, the Honduran economy and harmed consumers.

Mr. Cerna has documented an alleged series of acts and omissions by the Government of Honduras (under the Maduro Administration), which together and separately possibly rise to the level of indirect expropriation covered by the terms of the Bilateral Investment Treaty in effect between our two nations since 2001. These possibly illegal measures included, among other things, a predatory pricing scheme; interference with CEMAR's registration of its trademarks; and improper charges of tax evasion and customs irregularities against CEMAR and against Mr. Cerna personally.

In each of these instances, Mr. Cerna alleges not that the previous Government of Honduras passively tolerated illegalities that it could not prevent, but that it actively participated in them. These are very serious charges.

The U.S. Government and The Government of Honduras have investigated this case and have reached the conclusion that in the process of being eliminated from the market, CEMAR was the victim of applied predatory prices and anticompetitive practices.



As a compact-eligible country under the Millennium Challenge Act program, Honduras will receive about \$215 million in direct U.S. aid in the next five years. More than half of this aid (\$ 125.7 million) will be invested in transportation projects. I understand that part of this funding will be used to purchase products made with materials manufactured by the same two companies that were allegedly involved in forcing CEMAR out of the Honduran market. This may violate some of the qualifying criteria, as does the allegation that Honduras' performance is severely falling under the MCA's Control of Corruption and the Rule of Law criteria.

In addition, according to the Honduras Compact-Eligible Country Report prepared by the MCC in October 2007, the Honduran government has failed to meet performance standards in the Control of Corruption and Rule of Law criteria. This is further evidence that the Government of Honduras has made little or no effort to root out the same causes that drove CEMAR out of the country.

Under the compact, the qualifying country must maintain its eligibility criteria and contractual agreements must be made with private companies.

I trust you will agree with me that U.S. investors should be treated fairly and equitably by the Government of Honduras, especially when U.S. taxpayer funds are being used to finance infrastructure projects in Honduras. I request, in accordance with all applicable rules and regulations, your assistance and cooperation in urging President Zelaya to resolve this issue with Mr. Cerna and CEMAR.

Thank you for your attention to this important matter.

Cordially,



Lincoln Diaz-Balart



**Congress of the United States**  
**Washington, DC 20515**

November 7, 2007

The Honorable Jose Manuel Zelaya Rosales  
President of the Republic of Honduras  
3007 Tilden Street Northwest  
Suite 4M  
Washington, D.C. 20008

Dear Mr. President:

We are writing to express our profound concern regarding the alleged inequitable treatment of Oscar M. Cerna, a United States citizen and constituent, and his company Cemento America, S.A. de C.V. (CEMAR) by the previous Government of Honduras.

Over the course of four years Mr. Cerna and CEMAR invested more than \$25 million in Honduras and opened a new cement plant. Mr. Cerna's investment and new cement plant brought important economic benefits to Honduras, including the creation of many jobs.

Mr. Cerna presented us information which alleges that CEMAR was driven out of business by what appears to be a concerted effort by the previous Government of Honduras (the Maduro Administration) acting in collusion with the existing cement duopoly. Together, the previous administration and the cement duopoly, appear to have engaged in conduct to restrict competition and to create artificial barriers to new competitors, which adversely affected the economy. These questionable acts included a predatory pricing scheme, interference with CEMARs' registration of its trademark, and questionable charges of tax evasion and customs irregularities against CEMAR and Mr. Cerna.

It is further alleged by Mr. Cerna that the previous Government of Honduras not only passively tolerated illegalities that it could have prevented, but that it actively participated in them.

According to Mr. Cerna the aforementioned actions rise to the level of indirect expropriation, covered by the terms of the Bilateral Investment Treaty (BIT) in effect between the United States and Honduras. We are profoundly concerned that in the case of CEMAR, Honduras did not meet its requirements under the BIT to treat American companies and citizens fairly and equitably.



The United States and Honduras share a strong friendship. The United States has provided millions of dollars in direct and indirect aid to Honduras, and American companies have invested millions more. If American companies come to the conclusion that they cannot compete fairly in Honduras, they may curtail their investments, with a detrimental effect for both the United States and Honduras.

We respectfully request you to consider the allegations by Mr. Cerna and to right any possible wrongs committed by the previous government of Honduras.

Cordially,



Lincoln Diaz-Balart



Mario Diaz-Balart





**Congress of the United States**  
**Washington, DC 20515**

December 7, 2007

The Honorable Jose Manuel Zelaya Rosales  
President of the Republic of Honduras  
3007 Tilden Street Northwest  
Suite 4M  
Washington, D.C. 20008

Dear Mr. President:

You will recall that we wrote to you on November 1, 2007, to make you aware of a possible indirect expropriation of the investments in Honduras of Mr. Oscar Cerna, a United States citizen and our constituent, in violation of Honduran law and the bilateral investment treaty between our two countries. A member of our staff tells us that your administration has requested copies of the information provided by Mr. Cerna outlining the facts of the case.

Mr. Cerna has authorized us to communicate his willingness to share all pertinent information regarding this matter. He advises us that much of this information comes from Honduran government files. Moreover, it is our understanding that the acts of which Mr. Cerna complains are corroborated by public statements and actions by government officials in Honduras.

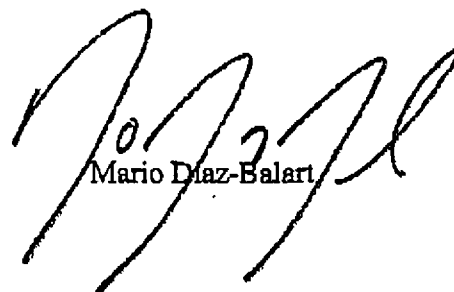
To expedite a solution to the case, and given the delay of more than two years in addressing it, we respectfully request, in accordance with all applicable rules and regulations, that you designate his Excellency Ambassador Flores to review the alleged violations, and to meet with Mr. Cerna, his representatives, and representatives of our offices to resolve this matter once and for all.

Upon receiving notice that you have made the appropriate arrangements, we will immediately advise Mr. Cerna to make plans to be present in Washington on the date and at the time and place you designate, Mr. President.

We look forward to hearing from you on this matter and thank you for your consideration.

Cordially,

  
Lincoln Diaz-Balart

  
Mario Diaz-Balart

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CHAIRMAN

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STAFF DIRECTOR

PETER M. YEO  
DEPUTY STAFF DIRECTOR

DAVID S. ABRAMOWITZ  
CHIEF COUNSEL

ONE HUNDRED TENTH CONGRESS

## CONGRESS OF THE UNITED STATES

COMMITTEE ON FOREIGN AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515

TELEPHONE: (202) 225-5021

[HTTP://WWW.FOREIGNAFFAIRS.HOUSE.GOV/](http://www.foreignaffairs.house.gov/)

ILEANA ROS-LEHTINEN, FLORIDA  
RANKING REPUBLICAN MEMBER

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REPUBLICAN STAFF DIRECTOR

MARK C. GAGE  
REPUBLICAN SENIOR POLICY ADVISOR

DOUGLAS C. ANDERSON  
REPUBLICAN CHIEF COUNSEL

February 11, 2008

The Honorable Carlos M. Gutierrez  
Secretary, Department of Commerce  
Mailstop 61  
U.S. Department of Commerce  
14th & Constitution Ave. NW  
Washington, DC 20230

Dear Secretary Gutierrez:

I am writing to you to express my concern about the case of Mr. Oscar M. Cerna, a constituent of my Congressional district and the principal owner of Cemento America, S.A. de C.V. (CEMAR). In 2001, Mr. Cerna began investing approximately \$25 million in Honduras to open a new cement plant which brought thousands of jobs to the area.


According to documentation provided by Mr. Cerna, the CEMAR product was initially successful in Honduras and was authorized by the Government of Honduras to be exported to the rest of the region. However, subsequent actions taken by the Government of Honduras with regard to the Honduran cement industry appear to potentially run contrary to the Bilateral Investment Treaty between our two nations.

Attached is a brief summary that details the case for your review, entitled "Indirect Expropriation of a U.S. Investment by the Government of Honduras (GOH)." According to Mr. Cerna, both the U.S. Government and the Government of Honduras have investigated the proceedings and reached the conclusion that, in the process of being eliminated from the market, CEMAR was victim to applied predatory prices and anticompetitive practices.

Although I understand the events in question did not occur under President Zelaya's administration, Mr. Cerna shares that no steps have been taken to address his situation in the two years since it was brought to his attention. Therefore, consistent with all applicable rules and regulations, I respectfully request that you meet with Mr. Cerna and his representatives to discuss these issues in hopes of finding an equitable solution that is agreeable to all parties involved.

Thank you for your consideration of this request.

Sincerely,



ILEANA ROS-LEHTINEN  
Ranking Member



TOM LANTOS, CALIFORNIA  
CHAIRMAN

HOWARD L. BERMAN, CALIFORNIA  
GARY L. ACKERMAN, NEW YORK  
ENI F.H. FALEOMAVAEGA, AMERICAN SAMOA  
DONALD M. PAYNE, NEW JERSEY  
BRAD SHERMAN, CALIFORNIA  
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ELIOT L. ENGEL, NEW YORK  
BILL DELAHUNT, MASSACHUSETTS  
GREGORY W. MEEKS, NEW YORK  
DIANNE E. WATSON, CALIFORNIA  
ADAM SMITH, WASHINGTON  
RUSS CARRAHAN, MISSOURI  
JOHN S. TANNER, TENNESSEE  
GENE GREEN, TEXAS  
LYNN C. WOOLSEY, CALIFORNIA  
SHEILA JACKSON LEE, TEXAS  
RUBEN HINOJOSA, TEXAS  
JOSEPH CROWLEY, NEW YORK  
DAVID WU, OREGON  
BRAD MILLER, NORTH CAROLINA  
LINDA T. SANCHEZ, CALIFORNIA  
DAVID SCOTT, GEORGIA  
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ALBIO SIRE, NEW JERSEY  
GABRIELLE GIFFORDS, ARIZONA  
RON KLEIN, FLORIDA

ROBERT R. KING  
STAFF DIRECTOR

PETER M. YEO  
DEPUTY STAFF DIRECTOR

DAVID S. ABRAMOWITZ  
CHIEF COUNSEL

ONE HUNDRED TENTH CONGRESS

## CONGRESS OF THE UNITED STATES

COMMITTEE ON FOREIGN AFFAIRS

U.S. HOUSE OF REPRESENTATIVES

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DOUGLAS C. ANDERSON,  
REPUBLICAN CHIEF COUNSEL

February 11, 2008

Ambassador John J. Danilovich  
Chief Executive Officer  
Millennium Challenge Corporation  
875 Fifteenth Street NW  
Washington, D.C. 20005

Dear Ambassador Danilovich:

I am writing to you to express my concern about the case of Mr. Oscar M. Cerna, a constituent of my Congressional district and the principal owner of Cemento America, S.A. de C.V. (CEMAR). In 2001, Mr. Cerna began investing approximately \$25 million in Honduras to open a new cement plant which brought thousands of jobs to the area.

According to documentation provided by Mr. Cerna, the CEMAR product was initially successful in Honduras and was authorized by the Government of Honduras to be exported to the rest of the region. However, subsequent actions taken by the Government of Honduras with regard to the Honduran cement industry appear to potentially run contrary to the Bilateral Investment Treaty between our two nations.

As a compact-eligible country under the Millennium Challenge Account, it is important that we work with the government of Honduras to ensure that our taxpayer funds are working to support an environment that is fair and equitable to all investors.

Therefore, consistent with all applicable rules and regulations, I respectfully request your assistance and cooperation in urging President Zelaya to discuss these issues with Mr. Cerna in hopes of finding a solution that is agreeable to all parties involved.

Thank you for your consideration of this request.

Sincerely,



ILEANA ROS-LEHTINEN  
Ranking Member



**Congress of the United States**  
**Washington, DC 20515**

January 28, 2008

The Honorable Carlos Gutierrez  
Secretary  
U.S. Department of Commerce  
14th & Constitution Ave, NW  
Washington, D.C. 20230

Dear Secretary Gutierrez:

We are writing on behalf of Oscar Cerna to express our profound concern regarding the alleged inequitable treatment of Oscar M. Cerna and his company Cemento America, S.A. de C.V. (CEMAR) by the previous Government of Honduras. Mr. Cerna is a United States citizen and constituent with business in South Florida.

According to Mr. Cerna, he has lost a substantial investment in Honduras as a direct result of the failure by the Government of Honduras to honor its obligations under the US-Honduras Bilateral Investment Treaty (BIT 2001). The BIT requires each government to extend fair and equitable treatment, full protection and security and in no case accord treatment less favorable than required by international law.

Enclosed is a brief summary for your review, provided by Mr. Cerna, entitled "Indirect Expropriation of a U.S. Investment by the Government of Honduras." The summary documents the alleged efforts by the Government of Honduras (under the Maduro Administration), acting in collusion with the existing cement duopoly, to eliminate Mr. Cerna's company from the Honduran market. One of these two companies is partially government owned through its own military pension fund and the other has government ties.

We have also enclosed two documents provided by Mr. Cerna, one from the U.S. Trade Representative and the other from the Government of Honduras regarding their respective investigations into this matter. Both reports reached the same conclusion that, in the process of being eliminated from the market, CEMAR was the victim of applied predatory prices and anticompetitive practices.

Three years have passed since the U.S. investment was eliminated from the Honduras market. This matter has been disregarded by the current Honduran President and his administration for the past two years, and it is now time for some immediate action.

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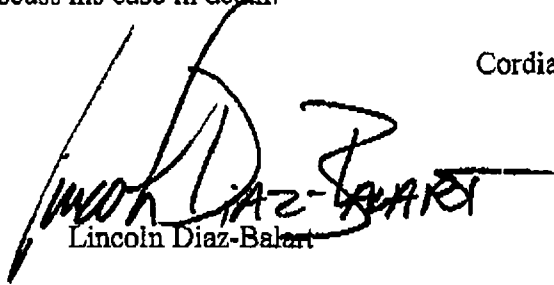




Enclosed are copies of recent letters expressing concern with regard to this issue from my Congressional colleagues. Along with my colleagues and on behalf of Mr. Cerna, I trust you will agree with me that U.S. investors should be treated fairly and equitably by the Government of Honduras.

We respectfully request, in accordance with all applicable rules and regulations, your assistance and cooperation in urging President Zelaya to resolve these alleged violations against Mr. Cerna and CEMAR. I would also appreciate it, if you could meet with Mr. Cerna personally to discuss his case in detail.

Cordially,



Lincoln Diaz-Balart



Mario Diaz-Balart



DAN BURTON  
5TH DISTRICT, INDIANA

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FOREIGN AFFAIRS  
SUBCOMMITTEES:  
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RANKING MEMBER

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OVERSIGHT AND GOVERNMENT  
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FORMER CHAIRMAN (1997-2002)

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DOMESTIC POLICY



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February 14, 2008

Ambassador Charles A. Ford  
U.S. Ambassador to Honduras  
US Embassy Honduras, Unit 2900, Box 68  
APO AA 34022

Fax No. 011 (504) 237-2727

Dear Ambassador Ford,

I write to you today regarding an American businessman, Oscar Cerna and his company CEMAR, whose cement plant in Honduras was allegedly expropriated by the Honduras Government in 2004.

As you know, several of my colleagues in Congress, in addition to myself, have addressed this issue before with both you and President Zelaya. I would like to know if any action has been taken by the Honduras Government to remedy this situation.

Additionally, I am under the impression that the Embassy has not yet provided us with an opinion on this case, including whether there have been treaty violations as alleged by Mr. Cerna. If you have not already done so, I would like to request the Embassy's opinion as soon as possible, so that I may share that important information with my colleagues in Congress.

In closing, I would like to thank you for working with us on this important matter, and I hope that we can work together to ensure that the Honduras Government understands the importance of finding a prompt and legally acceptable solution to Mr. Cerna's case.

Sincerely,

Dan Burton  
Member of Congress



DAN BURTON  
5TH DISTRICT, INDIANA

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INTERNATIONAL RELATIONS

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VETERANS' AFFAIRS

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Congress of the United States  
House of Representatives  
Washington, DC 20515-1405

September 14, 2006

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The Honorable Susan C. Schwab  
U.S. Trade Representative  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Dear Ambassador Schwab:

I am writing to you on behalf of my good friend, and an incomparable businessman, Oscar M. Cerna. You may recall that Mr. Cerna's U.S.-Japanese Joint Cement Venture in Honduras was referenced in your office's 2005 National Trade Estimates Report on Foreign Trade Barriers (the NTE Report). In fact, I am very familiar with Mr. Cerna's Honduran cement company (CEMAR) and the problems that he and his business partners encountered there with apparently "anti-competitive practices and predatory pricing" and improper government intervention.

The whole issue of fair treatment of United States businesses and investors throughout Latin America, indeed the world, is an issue that I have worked on for many years and discussed with your predecessor and many of our Ambassadors. In fact, I believe that promoting fair trading and business practices with our international partners is, and rightly ought to be, a key component of our foreign policy and our efforts to spread democracy and prosperity across the globe. Because of his experience as an international businessman, Mr. Cerna has proven to be an invaluable resource for me on this subject.

I understand that Mr. Cerna will be visiting Washington, D.C., the week of September 25<sup>th</sup>. I know that your time is extremely valuable and that your schedule is quite busy, but I would greatly appreciate it if you or your Assistant USTR for the Americas, Everett Eissenstat, would give every due consideration to granting Mr. Cerna a brief meeting. I believe it would be beneficial for Mr. Cerna to share with you his personal story and updated information regarding his situation in Honduras. Should such a meeting be possible, your staff can contact Mr. Cerna directly at 786-316-0933.

I greatly appreciate your timely and personal attention to this request.

Sincerely,

Dan Burton  
Chairman  
Subcommittee on the Western Hemisphere  
House Committee on International Relations

Cc: Mr. Oscar Cerna



DAN BURTON  
5TH DISTRICT, INDIANA

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INTERNATIONAL RELATIONS

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**Washington, DC 20515-1405**

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July 5, 2006

The Honorable Charles A. Ford  
Ambassador of the United States to Honduras  
United States Embassy  
Avda. La Paz  
Apartado Postal 3453  
Tegucigalpa, Honduras

Dear Mr. Ambassador:

I recently spent some time with an old friend of mine, Oscar Cerna; and he mentioned a meeting he had with you regarding the problems he encountered trying to establish a cement company in Honduras. As you might remember from your conversation, Mr. Cerna's project was an immediate success, however, he believes that his venture subsequently failed because of anti-competitive and predatory practices employed by the country's other two cement companies with, in his opinion, improper support from government officials. As an isolated incident, the Cerna case would be a matter for concern but I understand that Mr. Cerna's experience is by no means unique. In fact, I understand that many U.S. investors are reluctant to set up businesses in Honduras because of concerns over forms of competition allowed in Honduras that would be considered highly anti-competitive, to say the least, if conducted here in the United States.

This whole issue of ensuring fair treatment for U.S. businesses and investors throughout Latin America, indeed the world, is an issue that I have worked on for many years and discussed with many of our Ambassadors. In fact, I think that promoting fair trading and business practices with our international partners is, and rightly ought to be, a key component of our foreign policy and our efforts to spread democracy across the globe.

For example, since the 1980s, I have strongly championed the cause of promoting democratization in Central and South America. As Chairman of the House International Relations Committee's Subcommittee on the Western Hemisphere, I have spent the last year and a half visiting various countries through the hemisphere and conducting numerous Congressional hearings to assess the state of democracy in the region. Based upon my own observations and the experts' testimony, I am convinced that despite the measurable gains of the eighties and nineties, many Latin American democracies remain dangerously fragile.





The Honorable Charles A. Ford  
Page 2

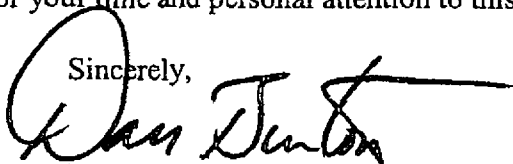
I am increasingly convinced that the key to stabilizing and strengthening democracy in the Western Hemisphere is alleviating the region's rampant poverty. We can only do that by working closely with our partners in the region to create new economic opportunities through expanded trade and investment. I believe that U.S. entrepreneurs and U.S. companies, which have invested in Latin America for many years, have the potential to play a significant role in this process. I believe your predecessor, Ambassador Palmer, even once publicly cited Mr. Cernas' project as an example of the economic benefit that free and fair trade could bring to Honduras. But to fully realize this potential, businesses and investors need stability and fairness in the legal and economic environment.

Tragically, though, it seems that many of our regional partners misuse their own economic and judicial systems to either gain unacceptable advantage over U.S.-owned corporations or to shut U.S. and foreign investors out of their markets altogether – as appears to have happened with Mr. Cerna. In my opinion, every time we allow anti-competitive practices to force U.S. companies out of business in Honduras – as happened in the Cerna case – or anywhere else in Latin America, there is a further chilling effect upon U.S. investment in the region. Consequently, these cases can only cause irreparable damage to hemispheric trade and regional efforts to improve the lives of the citizens of Latin America. I am sure you will agree – and I would appreciate hearing your thoughts on this subject – that the consequences for the United States – both economically and in terms of spurring uncontrolled migration to the United States – would be severe should Latin America slide backwards towards dictatorships and violence.

We can avoid this; but in order to do so the United States must ensure that our trading partners operate in a free, fair and transparent fashion. Consequently, I respectfully ask you and your legal and commercial officers, as I have asked many of our other Ambassadors, to be vigilant to these problems, and where appropriate, take immediate action to work with the U.S. companies and investors to remedy these problems promptly and fairly. Further, I would respectfully ask you to raise our concerns directly with the Honduran government and request that they take immediate action to address these problems.

I thank you in advance for your time and personal attention to this urgent matter.

Sincerely,



Dan Burton  
Chairman  
Subcommittee on the Western Hemisphere  
House Committee on International Relations



08/30/2004 13:46 2354  
 08/30/2004 13:00 FAX 202 22-0016

CEMAR  
 REP. DAN BURTON

PAGE 04

002

DAN BURTON  
 5TH DISTRICT, INDIANA

COMMITTEES:  
 GOVERNMENT REFORM  
 FORMER CHAIRMAN (1997-2002)

SUBCOMMITTEES:  
 HUMAN RIGHTS AND WELLBEING  
 CHAIRMAN

NATIONAL SECURITY, EMERGING THREATS AND  
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INTERNATIONAL RELATIONS

SUBCOMMITTEES:  
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WORLDWIDE WEB PAGE:  
<http://www.house.gov/burton>

April 9, 2004

The Honorable Ricardo Maduro  
 President  
 The Republic of Honduras  
 Casa Presidencial  
 Tegucigalpa, Honduras

VIA FAX: 011-504-290-0570

Dear Mr. President:

I am writing you today about a very important matter regarding my good friend, Mr. Oscar Cerna, President and co-owner of the Cemar cement facility in San Lorenzo, Honduras.

I have known Mr. Cerna and his family for many years. Along with several of my colleagues in Washington, D.C., I have been supportive of his project in Honduras from the very beginning. I have been very impressed with Mr. Cerna's ability to form a U.S.-Japanese joint venture for this project, which I had hoped would bring much-needed foreign investment and job creation to Honduras, as well as a healthy injection of fair competition to your cement sector. I understand the investment to-date exceeds US \$25 Million.

The United States government values very highly its long-standing relationships with our friends in Central America, and Honduras in particular. As you know, we continue to provide financial aid to Honduras, and we are proud to share in the benefits of the various international treaties to which we are parties. We also look forward to holding ratification hearings in the very near future on the recently negotiated Central America Free Trade Agreements (CAFTA.)

However, on his recent visit to Washington, D.C., I was disappointed to learn that Mr. Cerna's project continues to be threatened by unfair business practices of his local competitors in Honduras.



08/30/2004 13:46 2354\*  
04/07/2004 13:00 FAX 202 22- 0016

CEMAR  
REP. DAN BURTON

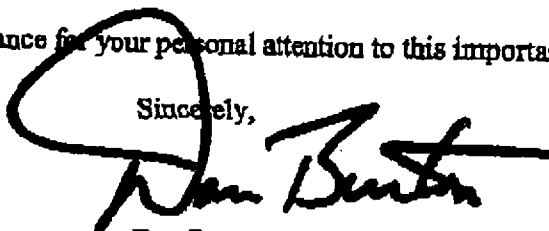
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The United States government is dedicated to the principles and benefits of the free enterprise system. It was very disappointing, therefore, to hear that one of our best businessmen is being subjected to unfair treatment in a country such as Honduras, with which we share so many common bonds.

It is my sincere hope that Mr. Cerna's position is not further compromised by the improper business practices of other companies. It would be helpful to me personally to understand what steps your Administration could take to help remedy this unfortunate situation.

Thank you in advance for your personal attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Burton". The signature is stylized with a large, looping initial "D" and a long, sweeping horizontal stroke at the end.

Dan Burton  
Member of Congress



08/30/2004 13:46 235415

CEMAR

PAGE 08

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PAGE 3/5

DAN BURTON  
9TH DISTRICT, INDIANACOMMITTEES:  
GOVERNMENT REFORM  
Domestic Concerns (1987-2002)SUBCOMMITTEES:  
HUMAN RIGHTS AND HUMANITARIAN  
CONCERNSNATIONAL SECURITY, EMERGING THREATS AND  
INTERNATIONAL RELATIONS

INTERNATIONAL RELATIONS

SUBCOMMITTEES:

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ASIA AND THE PACIFIC



**Congress of the United States**  
**House of Representatives**  
 Washington, DC 20515-1405

January 7, 2004

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JANESVILLE, WI 53530  
TELEPHONE (608) 862-8770  
TOLL-FREE (800) 446-1838WORLDWIDE WEB SITE:  
<http://www.house.gov/danburton>

The Honorable Larry Palmer  
 United States Ambassador  
 United States Embassy  
 Tegucigalpa, Honduras

Dear Ambassador Palmer:

I understand from my good friend, Oscar Cerna that he has met with you and your staff seeking the Embassy's assistance on behalf of his company CEMAR, a U.S.-Japanese joint venture.

I know that you and your staff at the Embassy are working tirelessly to further the expansion of U.S. investment in Honduras. I think that you will agree with my contention that it cannot be in the best interest of the U.S. to allow the corporations of American companies abroad to be targeted and damaged commercially by foreign competitors engaging in activities that would be illegal in the United States. In many cases, these same foreign companies have a significant presence in the U.S., where they enjoy the protections of our legal system. From the information that has been presented to you, is it clear that CEMAR's competitors are engaging in various improper activities? Is there any assistance that you or your staff can provide to Mr. Cerna as he continues to combat the illegal business tactics currently perpetrated against his company? I would be most appreciative if you could keep me posted on this issue.

I thank you in advance for your personal attention to this matter. I would be pleased to hear from you in the near future, if you have any developments to share with me.

Sincerely,

Dan Burton  
 Member of Congress

DB/mfv





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CEMAR

PAGE 06

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Page 2



*NE*  
Embassy of the United States of America

*1/16 Feb. 12 and Jan*  
Tegucigalpa, Honduras

January 15, 2004

Dear Mr. Burton:

Thank you for your letter of January 7 concerning problems encountered by Oscar Cerna and his company, CEMAR, in Honduras. We believe the project makes a valuable contribution to economic activity in the southern part of the country and is already having a favorable competitive impact on the sector, which was previously dominated by only two companies. We expect that CEMAR will also be an important factor in increasing Honduran foreign exchange earnings and adding to regional integration when exports to El Salvador and Nicaragua take off.

My staff and I have been in close contact with Mr. Cerna from the beginning of the development of the cement plant. Early on, in 2002, we assisted in obtaining the cancellation of import duties and penalties charged on temporarily imported equipment bound for Nicaragua. We have provided guidance and counsel in confronting obstacles apparently instigated by well-connected Honduran business people. We have also brought the importance of the project to the attention of key members of the Honduran economic cabinet and weighed in for lifting of restrictions on exports of cement for new entrants to the market. We have had several conversations with Mr. Cerna about the latest problems caused by a foreign competitor and have picked up some anecdotal corroboration of Mr. Cerna's charges. If necessary, we expect that the company will be able to put a credible legal case together.

Prior to any legal moves, Mr. Cerna has asked for Embassy assistance to inform the government, at the highest level, of the negative impact on the company of the apparent anti-competitive activity. On Friday, January 9<sup>th</sup>, I personally met with the French Ambassador here in Honduras to inform him of the unethical and unfair practices employed by Mr. Cerna's rival company. In addition, Economic Counselor Robin Matthewman has spoken to both the Minister of Investment and the Minister of Industry and Trade about the

The Honorable  
Dan Burton,  
House of Representatives.



08/30/2004 13:46 23541

CEMAR

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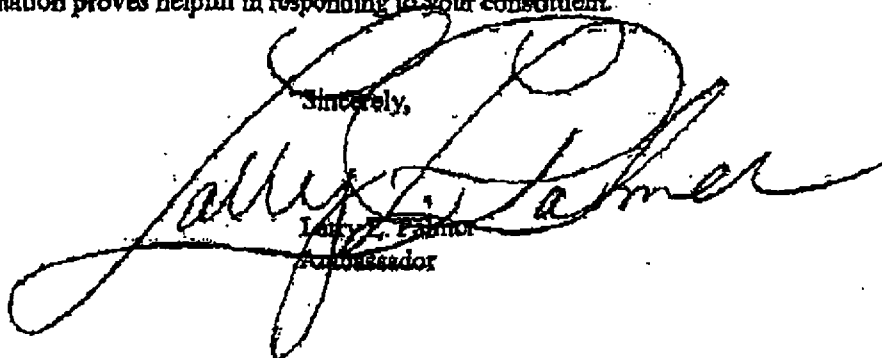
- 2 -

damaging effects of this anti-competitive behavior for existing and future U.S. investments.

Honduran government officials have told us that they agree on the importance of the issue and that they are working on a strengthened competition law. They have assured us that the government is communicating to the other companies in the sector the importance of refraining from anti-competitive behavior.

We consider commercial advocacy of this type to be one of the Embassy's most important roles and will continue to work closely with Mr. Cerna and the Honduran government to see if these problems can be resolved quickly. I hope this information proves helpful in responding to your constituent.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Larry E. Palmer".

Larry E. Palmer  
Ambassador





**The Gilman Group**  
1625 K Street, NW - Suite 1070  
Washington, DC 20006

Honorable Benjamin A. Gilman  
Chairman and CEO  
Member of Congress 1973-2003  
Former Chairman  
House International Relations Committee

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www.thegilmangroup.com  
gntgilman@optonline.net

October 8, 2008

The Honorable Condoleezza Rice  
Secretary of State  
U.S. Department of State  
Washington, D.C. 20520

REF: Congressional Petition Regarding Expropriation of Oscar Cerna's  
U.S. Investment: Referral to Justice Department (FCSC)

Dear Madam Secretary,

On behalf of Oscar Cerna, a U.S. citizen and a Florida resident, I respectfully request that you refer the Cemento America-CEMAR expropriation case to our Justice Department (Foreign Claims Settlement Commission) for its review and disposition.

The attached Congressional Petition from the Chairman and the Ranking Member of the Subcommittee of the Western Hemisphere of the House International Relations Committee is signed by 65 Members of Congress, including the respective Chairman of the House Ways and Means and the Judiciary Committees. The letter notes official investigations of this case and compelling evidence of human rights violations against Mr. Cerna; and includes a formal request that his case be referred by you to our Justice Department.

Our State Department is familiar with the Cerna case. It has previously received documentation regarding the Honduras government's direct involvement in the takeover of Mr. Cerna's \$27 million U.S. investment by the partially Honduran military owned cement company in 2004. Furthermore, our former U.S. Ambassador to Honduras, Larry Palmer (2002-05) has attested in writing to Congress the validity of Mr. Cerna's expropriation claims.



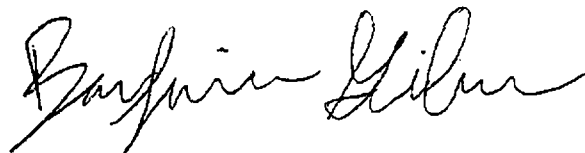
Mr. Cerna has met several times with Hugo Llorens, the newly appointed U.S. Ambassador to Honduras, stressing his position that neither the Honduras judicial system, not international arbitration offers any practical avenues of relief. As our State Department knows, the Honduras courts are recognized as being subject to influence. Moreover, arbitration is inequitable, and prohibitively costly and time consuming for a private citizen.

Accordingly, I am now appealing for your assistance in obtaining a long awaited resolution to the Cerna family suffering, noting that the Honduras government's acts were clearly wrongful under international law, and the record in this case demonstrates convincing evidence of systematic corruption.

Madam Secretary, both you and I share a passion for international relations and our country's commitment to rule of international laws throughout the world. I recognize your highly distinguished record of service to our nation, and your dedication to the protection of U.S. citizen's rights worldwide.

I thank you for your kind consideration and your referral of the Cerna case to our Department of Justice for their review.

With sincere best wishes,

A handwritten signature in black ink, appearing to read "Benjamin Gilman". The signature is fluid and cursive, with the first name "Benjamin" written in a larger, more prominent script than the last name "Gilman".

Benjamin A. Gilman  
CEO, The Gilman Group  
Former Congressman





**Criminal Complaint brought before the Special Prosecutor  
Against Corruption by Congresswoman Doris Gutierrez  
(Democratic Unification Party)**

**Criminal Complaint against Acts of Corruption**

To the Honorable Special Prosecutor against Corruption

I, **Doris Alejandrina Gutierrez**, of legal age, unmarried, a schoolteacher, Honduran, of this domicile, and currently a Member of Congress, respectfully hereby appear before the Office of the Special Prosecutor against Corruption lodging a formal complaint and petitioning for the investigation and verification of certain criminal acts committed by government officials during President Ricardo Maduro Administration (2002-2006), and by other private individuals, all in connection with the elimination of the company Cemento America, S.A. de C.V. (CEMAR), the producer of CEMENTO UNO. I hereby make reference to the following facts and circumstances:

**First:** CEMENTO UNO [CEMAR] was launched in the national market in October 2003. Immediately, high executives of the Honduran cement oligopoly, mainly Lafarge-INCEHSA (a partially state-owned company, 42%-controlled by the Honduras Military through its Institute of Military Prevision-IMP), planned the destruction of CEMENTO UNO [CEMAR]. For that purpose, they forged an alliance with the Palao William Auditing Firm [founding partners Finance Minister William Wong and David Palao, Shareholder's Representative of Lafarge-INCEHSA], who in turn colluded with high officials of the Government of Honduras at the Ministry of Finance [under Minister William Wong], as well as with certain directors and auditors of the Honduras Internal Revenue (DEI, or Honduras IRS).

Attached you will find a chronology detailing the collusion among the Honduras IRS [former Palao William employees], the IMP, Lafarge-INCEHSA, and the Palao William Auditing Firm to destroy CEMAR and to eliminate CEMENTO UNO [CEMAR] from the market, all to the detriment of the consumer, the construction industry, the national economy, and foreign investors.

Simultaneously, the very same Palao William Auditing Firm was involved in another scandal action whereby the Government of Honduras lost the amount of One hundred twenty five million three hundred sixty one thousand five hundred ninety seven lempiras (L.125,361,597.00), as a result of an audit that Honduras IRS auditors had previously performed on Lafarge-INCEHSA over a three-year fiscal period. After completing their review, the auditors found that this company owed the government One hundred thirty four million eight hundred ninety seven thousand nine hundred three lempiras with and nine cents (L.134,897,903.39); however, as a result of certain "negotiations" carried out by



Lafarge-INCEHSA with Honduras IRS officials, the company allegedly paid the government only Nine million five hundred thirty six thousand three hundred five lempiras and fifty one cents (L.9,536,305.51.) As a result of this act, your office has filed a summons against two former officials of the Honduras IRS accusing them of influence trafficking. The case is currently under consideration by the courts.

**Second:** I hereby attach a recording, on a compact disc and its transcription, which constitutes clear evidence of the scheme to illegally close the cement company [CEMAR], all to the detriment of the Government and the consumer. The recording contains a conversation held between a high executive of Lafarge-INCEHSA [partially military owned] and a cement salesman; more specifically, it deals with the (telephone) conversation between Dario Mencia, Sales Manager of Lafarge-INCEHSA, and Julio Lopez, owner of El Campeon Hardware Store.

The Special Prosecutor's office is asked to pay special attention to the part of the conversation where the high executive of Lafarge-INCEHSA plainly threatens in a premeditate way to reduce the price of cement with the purpose of eliminating the incipient competition brought about by CEMENT UNO [CEMAR], thus promoting and executing a malicious act.

In order to authenticate the validity and originality of this conversation, I hereby request that a qualified expert be appointed. For such endeavor, collaboration from friendly countries could be requested, in particular from specialized agencies that the United States of America has, all with the purpose of identify the material authors and the individuals behind the malicious acts, which are considered as criminal in nature, anywhere in the world.

**Third:** Attached to this complaint are reference materials about the Lafarge Group which confirm its recidivist antitrust, price fixing, and anticompetitive practices in more than a dozen countries, and for which they have been fined and sanctioned multi-millions of dollars.

Tegucigalpa, M.D.C., February 16, 2009.

[COPY]





















English Translation attached  
FILE NUMBER: 222-04

## **HONDURAS ATTORNEY GENERAL OFFICIAL STATEMENTS ACCUSING LAFARGE-INCEHSA AND CENOSA OF INTENTIONALLY CAUSING THE CEMAR BANKRUPTCY**

Attached is a Petition filed by the Honduras Attorney General dated October 13, 2004 in a case brought against the Government of Honduras by Lafarge-INCEHSA [Part-Military Cement Company] related to an Executive Order on cement price control.<sup>1</sup>

This case occurred after CEMAR had been eliminated from the market and bankrupted as stated in the attached Honduras Attorney General FILE NUMBER: 222-04. CEMAR was in the final process of selling its assets under extreme duress to Lafarge<sup>2</sup>-INCEHSA due to the Honduras IRS and the military auditors scheme to destroy CEMAR.

CEMAR was never involved in this case; however, this pleading contains several factual and legal statements of the Attorney General directly relating to CEMAR confirming the Honduras government's knowledge of the illegal anti-competitive practices used in the elimination of CEMAR.

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<sup>1</sup> At the peak of the predatory price war against "Cemento Uno" (CEMAR), the Honduras Government through their Congress instituted a cement price control of a maximum of 70 lempiras for six months. During this period Lafarge-INCEHSA and CENOSA blatantly complied without a complaint. Once CEMAR had been eliminated both companies were fined by the Honduras Government for increasing prices above 70 lempiras in July 2004. CEMAR always complied with the price control and was never fined

<sup>2</sup> Lafarge worldwide has been fined over \$700 million for price fixing, restricting competition and cartel practices.



English Translation attached  
FILE NUMBER: 222-04

**FILE NUMBER: 222-04.**

**REFUTATION OF THE AMOUNT CLAIMED IN AN INADMISSIBLE AND ILLEGAL LAWSUIT. A SPECIAL POWER OF ATTORNEY WITH LIMITATIONS AND PROHIBITIONS IS HEREBY GRANTED FOR A JUDICIAL MANDATE. DOCUMENTATION IS HEREBY ATTACHED.**

Honorable Judge of Letters for Administrative Disputes:

I, **SERGIO ZAVALA LEIVA**, of legal age, married, Attorney at Law, Honduran, and from this domicile, with Identification Card number **0638** issued by the Honduran Bar Association, acting in my capacity as **Attorney General of the Republic** and consequently true and lawful attorney of the **GOVERNMENT OF HONDURAS**; appointed through Legislative Decree number **03-2002** dated January 26, 2002, as I certify it with a duly authenticated copy that I am attaching hereto; with the utmost respect, I hereby appear before you refuting in time and form the "Sum" formulated in an unsustainable way in the illegal action initiated against my Principal by Attorneys **MAURICIO VILLEDA BERMUDEZ** and **ENRIQUE FLORES LANZA**, acting in their capacity as Legal Representatives of **LAFARGE INCEHSA, S.A. DE C. V.**, in the **ILLEGAL** lawsuit lodged against my Principal, the **GOVERNMENT OF HONDURAS**, through the **Ministry of Industry and Commerce**, requesting **THE PURPORTED ANNULMENT OF A SPECIFIC ADMINISTRATIVE ACT OF GOVERNMENT THAT THEY HAVE IMPROPERLY REGARDED AS "GENERAL" IN NATURE, SO AS TO AVOID COMPLIANCE OF THE REQUIREMENTS PRIOR TO THE FILING OF SUCH AN IMPROPERLY INITIATED ACTION, BY ALLEGING THAT IT IS NOT ACCORDING TO THE LAW; THE RECOGNITION OF AN ONEIRIC AND INDIVIDUALIZED LEGAL SITUATION, and to LEAVE WITHOUT EFFECT AND VALIDITY THE**





English Translation attached  
FILE NUMBER: 222-04

**CHALLENGED EXECUTIVE DECREE;** I hereby present my arguments based on the following facts and legal considerations:

**FACTS:**

**FIRST:** The aforementioned legal representatives allege without basis, when specifying the "Claimed Amount of the Lawsuit" and mending the complaint as a result of an order by your Court, that the damages caused as a result of the illegally challenged Executive Order are equal to Lps. 6.30 per bag of cement sold "EX PLANT," and that based on such fact, they have arrived at the "current" and oneiric sum for caused "losses and damages" of SIX MILLION SIXTY-EIGHT THOUSAND TWO HUNDRED SEVENTY-THREE LEMPIRAS (Lps. 6,068,273.00), **WHEN IT IS OBVIOUS THAT THE EXECUTIVE ORDER HAS NOT CAUSED THEM ANY DAMAGES AT ALL WITH RESPECT TO THE MENTIONED PRICE STRUCTURES,** insomuch as THE ESTABLISHED EX PLANT PRICE OF SEVENTY LEMPIRAS PER BAG, 12% SALES TAX INCLUDED, **CAUSES THE FINAL PRICE TO THE CONSUMER TO GO UP BY MORE THAN THE SIX LEMPIRAS AND THIRTY CENTS (Lps. 6.30) that the illegal plaintiff mentions, as a result of the addition of freight costs and the distributor's profit; THEREFORE THE FINAL PRICE TO THE CONSUMER, FREIGHT COSTS AND DISTRIBUTOR'S PROFIT INCLUDED, HAS REACHED THE SAME LEVELS AS IN MAY 2003 THAT THE AFOREMENTIONED LEGAL REPRESENTATIVES INVOKE.** Your Honor: THE ONLY PURPOSE OF THE EXECUTIVE ORDER IS TO STOP, TO HOLD, TO DETER THE LIMITLESS AND UNSCRUPULOUS ABUSE OF THE TWO CEMENT COMPANIES BY RESTRICTING THEM FROM PUNISHING THE CONSUMERS BEYOND THE LEVELS WHICH THE IMPOSED EXACTIONS [An official wrongfully demanding payment of a fee for official



English Translation attached  
FILE NUMBER: 222-04

services when no payment is due] HAVE REACHED IN HONDURAN SOCIETY TO THE PRESENT DATE.

And these considerations are made, Your Honor, WITHOUT TAKING INTO ACCOUNT THE IRREFUTABLE FACT STEMMING FROM THE LOOSE, INTERVENTIONIST AND MANIPULATIVE FREE WILL OF THE TWO CEMENT COMPANIES [LAFARGE-INCEHSA and CEMENTOS DEL NORTE] REGARDING THE ANTI-COMPETITIVE PRACTICES THAT THEY USED AGAINST "CEMENTO UNO" TO BREAK THE EPHEMERAL COMPETITION WITH WHICH IT MADE INROADS INTO THE MARKET; a stage during which THEY THEMSELVES LOWERED THE PRICE TO THE FINAL CONSUMER TO THE LEVEL OF Lps. 49.69 [US\$ 2.75<sup>1</sup>] per bag in February of this year, BY SELLING THE PRODUCT AT BELOW COST BY USING PREDATORY PRICES IN ORDER TO STRIKE DOWN, JUST AS THEY DID, THE ADVANTAGEOUS COMPETITION THAT AROSE TO THE BENEFIT OF THE CONSUMER. Therefore THERE ARE ABSOLUTELY NO PRETENDED DIFFERENTIAL "DAMAGES" against the illegitimate plaintiff, and the only thing evident from their actions and claims IS THEIR VORACIOUS AND LIMITLESS APPETITE IN THEIR ATTEMPTS AGAINST THE NATIONAL CONGLOMERATE THAT IS SO WORTHY OF HONEST ENTREPRENEURS WITH INTENTIONS OF RATIONAL, MODERATE AND RESTRAINED PROFIT.

For the reasons previously stated, I hereby CHALLENGE the idealized amount claimed.

**SECOND.-** Your Honor: So chaotic is the situation in an industry that is so essential to our national economy that WHEN THE TWO CEMENT COMPANIES IN OUR COUNTRY WERE PRIVATIZED, THE PRICE OF A BAG OF CEMENT



English Translation attached  
FILE NUMBER: 222-04

**WAS ABOUT FOUR LEMPIRAS, FINAL PRICE TO THE CONSUMER.** Therefore, it is quite evident, no matter how you look at it, that these processes only served TO PAUPERIZE SOCIETY, TO IMPOVERISH THE POOR AND TO MAKE THEM MISERABLE as a result of the levies brought about by the high prices at which the products manufactured by the privatized companies are now sold. On the contrary, back then it was assumed that there was going to be greater "EFFICIENCY" in their management and that, consequently, they would "CONTRIBUTE TO THE IMPROVEMENT OF THE ECONOMY". This was not more than a deceitful, specious and ingenuous argument that was then translated into cruel realities, such as the one that the cement producers want to impose on us, that is, that **WHEN THEY WERE ECONOMICALLY ASPHYXIATING THE ONLY COMPETITION THAT DARED TO EMERGE, "CEMENTO UNO", THEY LOWERED THE FINAL SALES PRICE TO THE CONSUMER to about FORTY NINE LEMPIRAS AND SIXTY NINE CENTS (L49.69) [\$2.75<sup>1</sup>] PER BAG, placed at the hardware store, with the cost of freight and sales tax included, being obvious that the going price at the factory WOULD HARDLY REACH THIRTY LEMPIRAS [\$39.09 per metric ton<sup>2</sup>].** Under these circumstances, everything was "BUSINESS AS USUAL" IN THEIR COMMERCIAL OPERATIONS. Once they finished, liquidated or killed the small competition that entered "the free forces of supply and demand of the market", which barely captured a 12.5% share of that market, "THE OMINOUS FORCES OF SUPPLY AND DEMAND", AND CONSOLIDATED THE EXISTING MONOPOLY OF THE INDUSTRY IN THE COUNTRY, **SURE AS THEY WERE OF THEIR VICTORY OVER THE ENEMY, PRICES UNSCRUPULOUSLY SKYROCKETED AND LAST AUGUST REACHED EIGHTY EIGHT LEMPIRAS [\$4.75<sup>3</sup>] PER BAG [\$111.68 per metric ton<sup>2</sup>] TO THE CONSUMER IN SAN PEDRO SULA.** By doing so, they flagrantly distorted the economic indexes and irremediably affected THE CONSTRUCTION INDUSTRY, a basic activity in the economic reactivation of one THE STRATEGIC



English Translation attached  
FILE NUMBER: 222-04

SECTORS THAT THE GOVERNMENT OF HONDURAS, IN SPITE OF THE NON-INTERVENTIONIST PROVISIONS CONTAINED IN THE CONSTITUTION, HAS RESERVED TO ITSELF UNDER EXTRAORDINARY CIRCUMSTANCES SUCH AS THE ONES BROUGHT ABOUT BY THE UNSCRUPULOUS PROFITEERING OF THE ONLY TWO CEMENT PLANTS IN THE COUNTRY.

Therefore, Your Honor, if events unfolded in that manner during the period when they [Lafarge-INCEHSA and CENOSA] applied PREDATORY PRICES against "CEMENTO UNO" AND AGAINST SOCIETY AS A WHOLE THROUGH ANTI-COMPETITIVE PRACTICES, THEY SOLD THEIR PRODUCTS AT BELOW COST WITH THE SOLE PURPOSE OF "BANKRUPTING THE COMPETITION". These practices are REPULSIVE, IMMORAL, ILLEGITIMATE AND ILLEGAL since in no way were they aimed AT "FAVORING THE CONSUMER", but precisely on the contrary, TO ATTEMPT AGAINST THE CONSUMER'S BEST INTERESTS, AS THEY DID ONCE THEY BURIED THE COMPETITION, WHICH THEY ACHIEVED IN THE END.

I hereby refute the amount claimed based on the following articles of law: 1, 80, 82, 228, 245, numerals 1), 2), 11), 20); 331, 332, 333 and 339 of the Constitution of the Republic; 1 and 40, numeral 1 of the Law concerning the Organization and Authority of the Courts; 19, function 1 of the Organic Law of the Office of the Attorney General of the Republic; 1, 39 and 40 of the Law concerning the Jurisdiction of Administrative Procedures.

#### **PETITION:**

Your Honor, with the utmost respect I **HEREBY REQUEST:** to have as refuted in time and form the amount claimed in the lawsuit; to process this





English Translation attached  
FILE NUMBER: 222-04

refutation collaterally and transfer it to the opposing party so that it may express its opinion about this refutation within three days; with its plea or without it, to open the motion to evidence over a period of ten calendar days to make motions and produce evidence; and to continue the due process until delivering the interlocutory judgment DISMISSING the oneiric amount claimed in the lawsuit **AND DECLARING THE PLAINTIFF GUILTY OF LITIGATING UNDER FLAWED LEGAL ARGUMENTS AND IN BAD PROCEDURAL FAITH, ALL IN AN ATTEMPT AGAINST THE BEST INTERESTS OF HONDURAN SOCIETY.**

**SPECIAL POWER OF ATTORNEY IS HEREBY CONFERRED FOR PURPOSES OF LITIGATION. RESTRICTIONS TO REPLACE IT.**

To continue with these proceedings, I hereby grant Special Power of Attorney for a Legal Mandate, with restrictions to replace it, to **GREGORIO ADRIAN ROSALES**, of legal age, married, Honduran, of this domicile, Attorney at Law, registered with the Honduran Bar Association under Number 02287, with address to receive notices at the offices of the Legal Services Unit of the **Ministry of Industry and Commerce** located in the third floor of the former FEADUANAH building, Boulevard Kuwait, in this capital city; telephone 235-3081; to whom I hereby grant the general powers of attorney for a legal mandate, with RESTRICTIONS TO REPLACE THIS ATTORNEY AND USE IT TO THE DETRIMENT OF THE REPUBLIC OF HONDURAS, OF THE POWERS EXPRESSLY MENTIONED, MORE SPECIFICALLY OF WAIVING THE RIGHTS TO APPEAL AND THE LEGAL JURISDICTIONS, OF COMMITTING TO AND SETTLING WITHOUT PREVIOUS EXECUTIVE ORDER PURSUANT TO ARTICLE 19, FIRST ATTRIBUTION OF THE ORGANIC LAW OF THE OFFICE ATTORNEY GENERAL OF THE REPUBLIC; **THEREFORE, THE COURTS MUST REFRAIN FROM ACKNOWLEDGING ALL ACTS OR OMISSIONS THAT VIOLATE OR**



English Translation attached  
FILE NUMBER: 222-04

**TRANSGRESS THIS PUBLIC NORM IF THE EXECUTIVE ORDER REQUIRED  
FOR SUCH PURPOSE IS NOT IN THE RECORDS.**

Tegucigalpa, M. D. C., October 13, 2004.

**Dr. SERGIO ZAVALA LEIVA  
ATTORNEY GENERAL OF THE REPUBLIC**

<sup>1</sup>Based on the average official exchange rate published by the Central Bank of Honduras for the month of February, 2004: 18.06 lempiras per dollar.

<sup>2</sup> One metric ton equals 23.529412 bags of cement.

<sup>3</sup>Based on the average official exchange rate published by the Central Bank of Honduras for the month of August, 2004: 18.54 lempiras per dollar.



*[Official letterhead]*  
**SECRETARY OF INDUSTRY AND COMMERCE**  
**Republic of Honduras**  
**General Directorate for Production and Consumption**

Tegucigalpa, M.D.C.  
September 23, 2004

Official Letter No. 162-04

[Ms.]  
**Miriam E. Garcia Perez, Esq.**  
Head Attorney (II) for Protection to the  
Consumer and the Elderly  
Your Office

Regarding Official Letter No. 361-04 dated September 9 of this year and received at this Directorate on Tuesday, September 21, I am enclosing herewith the cement report prepared by the commission integrated by personnel from the General Directorate for Production and Consumption and the Special Attorney's Office for Protection to the Consumer and the Elderly.

Sincerely,

*[Signed and sealed]*  
**NELSON PARKS**  
Deputy Director for Production and Consumption

Cc: File

<p><b>RECEIVED</b> Reception Section</p> <p>Date: <u>27/09/04.</u></p> <p>Time: <u>9:37</u></p> <p><i>Fatima Acosta</i></p>
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[Official letterhead]  
**SECRETARY OF INDUSTRY AND COMMERCE**  
**Republic of Honduras**  
**General Directorate for Production and Consumption**

## CEMENT INVESTIGATION REPORT

### Introduction

Currently, there are three cement plants in Honduras: Compañia Cementera Hondureña, S.A. (INCEHSA), located in Comayagua; Cementos del Norte, S.A. (CENOSA), located in Bijao, Cortes; and Cementos América, S.A. (CEMAR), located in San Lorenzo, Valle; the latter having commenced operations in October, 2003.

Prior to CEMAR's entry into the market, the two existing companies had split the domestic market geographically (INCEHSA, the central, southern and eastern regions; CENOSA, the northern and western regions), and did not compete by price in the market; on the contrary, when one increased prices, the other automatically adopted the same measure.

In the case at hand, according to information compiled by personnel of the General Directorate for Production and Consumption of the Secretary of Industry and Commerce, the average national daily production of cement is 82,000 (42.5 Kg) bags, with this [market] participation by company: CENOSA 50.2%, INCEHSA 37.3% and CEMAR 12.5%; for purposes of this report bulk cement sales are not taken into account.

Since its entry into the national market in Choluteca and San Lorenzo (October 2003), CEMAR, due to its location, rapidly gained market share in the south, an area historically dominated by INCEHSA – who, seeing its market share declining, began to apply predatory prices with the intention of eliminating CEMAR from the market. This situation deteriorated into a price competition between the two companies, with prices falling from Lps. 80.25 per bag (sales tax included) quoted to the end consumer in November, 2003, to Lps. 49.28 in February, 2004. It is important to clarify that the companies always invoiced at US \$3.75, then gave discounts up to Lps. 28.06, which were gradually reduced and eventually eliminated after August 16 of this year.

At the request of the Special Attorney's Office for Protection to the Consumer and the Elderly, a commission was formed to investigate the causes of the shortage of cement in the market. The commission consisted of the following members:

NAME	INSTITUTION
Miriam e. Garcia Perez	Special Attorney's Office for Protection to the Consumer and the Elderly
Nelson O. Parks	Secretary of Industry and Commerce
Justo Rufino Sorto	Secretary of Industry and Commerce

The investigation was conducted on site, at the three cement plants, in May, 2004. The results were as follows:





[Official letterhead]  
**SECRETARY OF INDUSTRY AND COMMERCE**  
**Republic of Honduras**  
**General Directorate for Production and Consumption**

**INDUSTRIA CEMENTERA HONDUREÑA, S.A. (INCEHSA); May 10-13, 2004**

According to the investigation carried out at INCEHSA from May 10-13, the following was established:

Average daily cement production was 30,600 42.5 Kg bags; the company also sells bulk cement to construction companies.

On Wednesday, May 12, due to overheating from running at maximum installed capacity (1,650 MT per day), it was necessary to shut down the kiln for six days. This situation did not cause any disruption in the market, as the company already had sufficient product in its silos to meet demand during this period.

INCEHSA has its own limestone quarries for production of clinker, the principal raw material of cement; however it also buys clinker from CENOSA when its own production is insufficient.

In relation to the foregoing, they stated the following:

- They were handling all orders in regular fashion
- They did not maintain inventories
- Regarding the supposed shortage of product in the market, they expressed that it was due to being in a season of high demand, peaking in April of this year, at 7% of the forecast sales.

**Calculation of Sales Price FOB**

Components	US\$	Lps.
Base Price FOB	3.75	
Exchange rate (Lps 18.0928)		67.85
(Discount by region)		(26.00)
FOB before sales tax		41.85
Sales tax		5.02
<b>New Price FOB</b>		<b>46.87</b>

The progression of the discounts granted by INCEHSA based on the region, were as follows: on May 30 between Lps. 26.00 and Lps. 28.50 (per 42.5 Kg bag); on June 1, 2004, reduced to Lps. 15.00, on June 16, 2004 to Lps. 6.00 and finally after August 16, 2004, discounts were eliminated.

**CEMENTOS AMERICA S.A. DE C.V. (CEMAR); May 17-19, 2004**

CEMAR commenced operations in October, 2003, by supplying the Choluteca and San Lorenzo markets only, and later expanding its coverage to the eastern and central parts of the country; the average daily production of the company was 9,000 42.5 Kg bags.



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**SECRETARY OF INDUSTRY AND COMMERCE**  
**Republic of Honduras**  
**General Directorate for Production and Consumption**

**Calculation of Sales Price FOB**

<b>Components</b>	<b>US \$</b>	<b>Lps</b>
Base Price FOB		70.00
Exchange rate (Lps 18.0928)		67.85
(Discount by region)		(23.35)
FOB before sales tax		<u>46.65</u>
Sales tax		5.60
<b>New Price FOB</b>		<b><u>52.25</u></b>

On the date the investigation was conducted, CEMAR, depending on the region and the conditions of sale (credit or cash) was granting discounts between Lps. 13.81 and Lps. 25.89 per 42.5 Kg bag; after June 1, 2004, it implemented a redistribution of its discounts, increasing them in certain areas and reducing them in others, in a range between Lps. 15.07 and Lps. 21.87. For example, in Tegucigalpa on May 17, 2004 it gave a discount of Lps. 22.35 and on June 1, 2004 it reduced the discount to Lps. 15.52. On the contrary, in Yuscaran, on May 17, 2004, it granted a discount of Lps. 13.86 and on June 1, 2004, it increased it to Lps. 17.57.

Unlike the other cement companies in the country, CEMAR imports its clinker from Japan, which takes 23 days to arrive at San Lorenzo in shipments of approximately 33,000 MT. According to company executives, it is not currently producing cement due to a lack of clinker and because of negotiations to sell the company to INCEHSA.

**CEMENTOS DEL NORTE (CENOSA); May 25-27, 2004**

CENOSA was not affected by the competition from CEMAR and did not participate in the price war unleashed in the central and southern regions, and like INCEHSA, has its own limestone quarries to produce clinker.

Average daily production was 42,000 42.5 Kg bags; the company also sells bulk cement to construction companies.

**Calculation of Sales Price FOB**

<b>Components</b>	<b>US\$</b>	<b>Lps.</b>
Base Price FOB	3.75	
Exchange rate (Lps 18.0928)		67.95
(Discount by region)		(15.50)
FOB before sales tax		<u>52.45</u>
Sales tax		6.29
<b>New Price FOB</b>		<b><u>58.74</u></b>



*[Official letterhead]*  
**SECRETARY OF INDUSTRY AND COMMERCE**  
**Republic of Honduras**  
**General Directorate for Production and Consumption**

On the date the investigation was conducted, CENOSA, depending on the region, was granting discounts between Lps. 8.00 and Lps. 15.50 per bag (42.5 Kg) and on June 1, 2004, it reduced the discount to Lps. 5.00.

**Price Movements per Bag (42.5 Kg = 94 lbs.) of Portland Gray Cement**  
**Tegucigalpa and Comayagua**  
**January 2002- August 2004**

<b>Dates</b>	<b>Price (Lempiras)</b>	
	<b>Minimum</b>	<b>Maximum</b>
January 2002 – April 2003	71.50	71.50
May – December 2003	80.25	80.25
January 2004	63.00	70.00
February 2004	49.60	56.00
March 2004	50.95	67.32
April 2004	53.90	62.00
May 2004	55.35	70.00
June 2004	60.48	76.00
July 2004	70.00	78.00
August 5, 2004	77.95	78.85
August 18, 2004	85.00	85.50
August 24	58.00	85.50

*[Signed and sealed]*  
**Miriam E. Garcia Perez**  
Special Attorney's Office for Protection to the  
Consumer and the Elderly

*[Signed]*  
**Justo Rufino Sorto**  
Ministry of Industry and Commerce

*[Signed and sealed]*  
**Nelson O. Parks**  
Ministry of Industry and Commerce



*[Official letterhead]*

***[GOH Legislative Remedies & CEMAR Export Permit]***

Ministry of Industry and Commerce  
Republic of Honduras

Tegucigalpa, M.D.C., March 18, 2003

**MINISTERIAL DECREE No. 54-2003<sup>1</sup>**

**THE MINISTER OF INDUSTRY AND COMMERCE**

**WHEREAS:** On February 18, 1994, the Ministry of Economy and Commerce (now Industry and Commerce) issued Decree No. 19-A-94 derogating all the directives contained in Resolution No. 260-93 dated August 30, 1993.

**WHEREAS:** The Ministry of Industry and Commerce, through the General Directorate for Production and Consumption, has the authority to adopt whatever measures are necessary to control and prevent restrictive practices that affect the free supply and circulation of goods and services.

**WHEREAS:** It is necessary to set priorities to prevent or combat hoarding or any other scheme that wrongfully tends to alter prices or to limit or restrict the free supply and circulation of basic consumption goods and services, and the inputs that are necessary for the operation of the country's activities.

**WHEREAS:** When published, Decree No. 19-A-94, dated February 18, 1994, only named the two cement producing companies [INCEHSA and CENOSA] in the country at that time.

**WHEREAS:** As a result of the evolution of the country's productive sectors, a new cement manufacturing company [CEMAR] has emerged, with the possibility of additional ones emerging in the near future.

**THEREFORE:**

Based on articles 35, number 8 and 9, 116, 118, and 122 of the General Law of Public Administration; articles 3 and 29, letters b) and c), as amended through Decree 54-90 dated July 10, 1990, and 6 and 31 of Decree 41-89 dated April 7, 1989, approving the Consumer Protection Law,

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<sup>1</sup> Government of Honduras (GOH) resolution authorizing CEMAR to export cement to the Central American region.





**HEREBY DECREES:**

**FIRST:** To modify article second of Decree No. 19-A-94 dated February 18, 1994, which henceforth shall read as follows:

**SECOND:** To authorize upon request, through the General Directorate for Production and Consumption of this Ministry, all existing and operating cement companies [Including CEMAR] in the country to export cement to the Central American region provided there are no shortages of cement in the national market.

**SECOND:** This Decree becomes effective as of today, and shall be published in the Official Gazette. **SO BE ORDERED.**

*[Signed and sealed]*  
NORMAN GARCIA  
[Minister]

*[Signed and sealed]*  
RAFAEL ANTONIO TREJO  
SECRETARY GENERAL



[SUMMARY]<sup>1</sup>**HONDURAS ANTI-CORRUPTION COMMISSION****REPORT on COLLUSION among the  
PART-MILITARY CEMENT COMPANY, its AUDITORS, and the  
HONDURAS IRS, to ELIMINATE a U.S. INVESTMENT (CEMAR)**

Attached is a Report by the Honduras Anti-Corruption Commission, updated in 2005, of its investigation of the involvement of the Government of Honduras, through its Ministry of Finance and the Honduras IRS, to illegally relieve Lafarge-INCEHSA (Part-Military Cement Company), of a \$10 million tax liability.

The Report also implicates the PALAO WILLIAM AUDITING FIRM, auditors for Lafarge-INCEHSA and for the Honduras Military, for a conflict of interest by the Managing Director David Palao (Lafarge-INCEHSA's Board of Directors Shareholders' Representative) and his Partner William Chong Wong (Minister of Finance, overseeing the Honduras IRS).

This Report also refers to the interest of Lafarge-INCEHSA's principal partners (the Honduras Military through its Institute of Military Provision-IMP) to exercise pressure on the Ministry of Finance to reduce the \$10 million tax liability; and states that the resources made available through this illegal subsidy successfully aided Lafarge-INCEHSA in its efforts to eliminate the U.S. Investment, CEMAR, from the Honduras market.

The Report concludes by stating that the Government of Honduras committed acts of corruption, abuse of authority and influence peddling through its Ministry of Finance, and the Honduras IRS, and in collusion with the external auditors (Palao William Auditing Firm) of the Part-Military Cement Company. The Report goes on to state that the abuse of power and political influence to validate illicit acts by the Government is a general practice in Honduras.

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<sup>1</sup> The full Report is available upon request.



# HONDURAS ANTI-CORRUPTION COMMISSION

## INCEHSA CASE [Part Military Cement Co.] – Honduras IRS<sup>1</sup>

**Accusation of alleged tax evasion, abuse of authority, influence peddling and acts of corruption collusion committed between Lafarge-INCEHSA [Part-Military Cement Company] and Officials of the Government of Honduras in prejudice of the latter.**

### Introduction

This information which is of public record makes it possible to describe and understand all of the circumstances relating to the alleged acts of corruption committed in collusion between Lafarge-INCEHSA[Part-Military Cement Company] and officials of the Government of Honduras in prejudice of the same, during the [President] Maduro Administration [2002-2006].

### a) Origin of the Case

On March 13, 2000, the Director of the Honduras IRS, Jorge Yllescas Oliva, and under the Program for Special Auditing to Large Taxpayers, Sonia Argentina Díaz, Blanca Ondina Castro, José Hilario Maldonado and Jorge Alberto Romero, the first three being auditors and the latter being Supervisor of Auditing, were assigned to verify entirely the tax obligations of Lafarge-INCEHSA during the period 1996-1999. On behalf of the company, the auditors were received, among others, by Francois Quin and Humberto Martinez, the first one being a French national and General Manager, and the second one being the Internal Auditor.

After the respective investigations and analysis, at the beginning of 2001, the auditors issued a preliminary report in which they revealed a series of objections against INCEHSA for the non-payment of taxes, interests, fines and surcharges for a total of L.134,897.903.39. As per the opinion of the Honduras IRS Legal Department, dated May 2, 2002, such calculation was considered very reasonable – and this was the way perceived by the executives of INCEHSA –

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<sup>1</sup> In 2002, the Government reduced a \$10 million tax liability of INCEHSA: a decision later declared illegal by the Anti-Corruption Commission. INCEHSA's auditing firm was also implicated in the report. These are the same auditors who in 2004 conducted a due diligence on CEMAR [the US investment, eliminated in 2004].



although there was reasonable circumstantial evidence that the amount charged could be increased if the sanctions to the Sales Tax (ST) was included, plus the Income Tax (IT) not collected for the sale of products at cost or below cost, not applied over the transfer of products to employees, members of the Honduras Military, their parents, executives and to it's Union – transactions which according to the law should be considered as sales for self use and consumption, to be taxed based on market price for the calculation of the ST<sup>2</sup> – ; in addition to the fines, surcharges and additional interests for delays in the filing of the income tax returns and the existence of unreliable accounting entries, that, according to the Tax Code gives rise to an Assessment due to Circumstantial Evidence, for the IT as well as for ST.<sup>3</sup>

The declarations given by the auditors in charge of the case, which are evidenced in documents, reveal that after the filing of the preliminary report, their supervisors were required by Lafarge-INCEHSA, on two occasions, to review the audit results. In the first meeting, the company accepted the tax liabilities because INCEHSA [Part-Military Cement Company] lacked legal basis and arguments to refute the auditing report.

In a second meeting, wherein the Chief of Auditing of the Honduras IRS and the representatives of the company were the only ones in attendance, the tax liabilities were not reduced either; thus, the original report of the auditors remained in effect, provided that payment thereof was going to be made.

Likewise, and prior to the end of the [President] Flores Administration [1998-2002], the then General Manager of Lafarge-INCEHSA met with Mr. Yllescas [Honduras IRS Director] to discuss the matter relating to the tax liabilities to the company. Lafarge-INCEHSA fundamentally expressed that it was willing to pay all of the taxes, fines, surcharges and interests charged, as indicated in the first report of the auditors; thus, it was agreed that the company was going to accept the benefits of a deferred payments plan –rights which are afforded to all taxpayers – and the corresponding payment schedule was prepared.

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<sup>2</sup> Article 2, Honduran Sales Tax Law.

<sup>3</sup> Articles 85, 86 and 87 of the Honduran Tax Code.





Inasmuch as the inspection intervention of the Honduras IRS comprised the period of 1996-1999, and due to the fact that IMP [Institute of Military Provision of the Honduras Military] had the absolute control of INCEHSA during the major part thereof, and held shares (41.56%) after it transferred its control to Lafarge (France), it is evident that IMP as well as the latter were directly interested in the reduction of the mentioned tax liabilities.

By mid 2001, the IMP [Honduras military] was facing serious financial problems and, thus, it could hardly absorb the impact of the aforementioned tax liabilities. Therefore, Lafarge, in its capacity as the majority shareholder, had to confront such obligation, which in turn would bring one of the following possible consequences: a) to demand IMP to transfer a large amount of shares in Lafarge-INCEHSA, as indemnification for latent defects in the stock sale transaction that took place in 1998, leaving it as a minority shareholder before Lafarge; or b) to deduct to IMP the total amount of the tax liabilities on account for payments of future dividends. Both cases would have a strong impact on the IMP's net worth and cash flow, leaving it with the risk to face the fair claims of its affiliates and creditors.

It was convenient to the interests of Lafarge-INCEHSA's principal partners to conspire, as in effect they did, to exercise pressure on the authorities of the Ministry of Finance, to get a radical reduction of the amount to be paid for the tax liabilities formulated against INCEHSA by the Honduras IRS, and this way to have at their disposal the resources to successfully confront the strong competition [CEMAR] that was coming. To that effect, they waited for the most convenient time.

**b) The Case passed to the hands of the Officials of the Maduro Administration**

At the end of January, 2002, after the installation of the Maduro Administration, Mario Duarte was appointed Director of the Honduras IRS in substitution of Jorge Yllescas, and as Deputy Secretary of Finance for Revenues, William Chong Wong, who, as previously mentioned, was one of the principal partners of the Palao William Auditing Firm, external auditors of Lafarge-INCEHSA (it is noted Chong Wong had already served as Honduras IRS Director during the [President] Callejas Administration [1990-1994]. Likewise, the other Partner-Director of the



Palao William Auditing Firm, David Palao, is the Shareholder's Representative of Lafarge-INCEHSA, and actively participates in the deliberations and decision making of its Board of Directors). Then, in March of 2002, the new Director of the Honduras IRS appointed Rosa Marina Girón as Sub-Director of such entity (Ms. Girón also served as the Sub-Director of the Honduras IRS when William Chong Wong was Honduras IRS Director in the Callejas Administration. [She is a close confidant of Chong Wong].

Upon assuming his new functions, and as part of the file inventory in charge of the Administration of the Honduras IRS, Mr. Duarte received from his antecesor the file on the case of Lafarge-INCEHSA and immediately instructed his subordinates to review it. At the beginning of March, 2002, the case was transferred to Ms. Rosa Marina Girón, who had recently assumed her new functions. In turn, Ms. Girón instructed Mr. Walter Guevara, Chief of Auditing of the South-Center Region of the Honduras IRS (and, coincidentally, former Chief of the Large Taxpayers Section of the Honduras IRS during the previous administration of Chong Wong and Rosa Marina Girón, in said entity), to appoint auditors to conduct a review of the Lafarge-INCEHSA file, and as such to give a positive answer to the claims of both the active and retired high military chiefs interested in the matter<sup>4</sup>, as well as of Lafarge-INCEHSA and of the representatives of Palao William, who had already dictated the new parameters of the settlement.

**c) The Pressure on the Auditors of the Honduras IRS continues**

Upon taking charge and to cover the formalities of the case, Walter Guevara requested an opinion from the Legal Department of the Honduras IRS with respect to the objections contained in the first Auditing Report (Report No. 1). In response thereof, in Memorandum No. 88-2002 of May 2, 2002, the chief of the Department, Ms. Lilian López, stated, after a detailed and exhaustive analysis and juridical facts on the case, that the tax liabilities contained in the Report No. 1 had legal basis; thus, the revision of the amounts charged to Lafarge-INCEHSA was illegal.

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<sup>4</sup> At that time, a group of military chiefs had already being questioned regarding the mismanagement of the Military's IMP.



*matters may create or uses any other device with the same purpose, will be sanctioned with imprisonment of six (6) to nine (9) years, plus the absolute disqualification for two times the time of the imprisonment". Tax Code: "Article 198. The following shall be aggravating circumstances of the smuggling crime: 1) The intervention of three or more persons committing it; 2)... 3)... 4)... 5)... 6) When the author or accomplice is a public official or employee of the Honduras IRS or a Custom Agent. Article 208. Any action or omission fraudulently evading the payment of taxes, contributions or tariffs assessing an act or originating an illegal benefit against the Honduras IRS, whether totally or partially, constitutes a tax fraud crime. Article 209. The circumstances indicated in articles 198, 199 and 200, preceding, are aggravating, extenuating or exempting circumstances of the tax fraud crime. Article 210. The tax fraud crime will be sanctioned: 1)... 2)... 3)... 4)... 5) With six (6) to eighth (8) years, if the amount of the taxes, contributions or omitted assessments exceeds five hundred thousand and one cent Lempiras (Lps. 500,000.01), plus a fine equal to ten (10) times the aforementioned amount...".*

#### j) **Conclusion of the Case**

In view of the fact that the IMP – an agency of the Honduras Military, which principal directors are high ranking military officers of the Honduras Military – still controls substantial amount of shares (which at present is estimated in a 41.56%) of Lafarge-INCEHSA, is of a mandatory conclusion that they exercised an important role in influencing and pressing so that all of the irregularities hereinbefore mentioned were consummated. This is the only way to explain the expression "*superior orders*", for the case to be "*arranged*", reported by Mrs. Díaz Herrera, that, if it is proven in the courts, will constitute a collusion to perform acts of corruption, abuse of authority and influence peddling by high ranking government officials, most specifically in the Ministry of Finance and the Honduras IRS, with the purpose of obtaining a subsidy which will place Lafarge-INCEHSA in a privileged position in the [Honduras] market.

In an evident conflict of interests, the principals previously mentioned were involved in arrangements suspiciously irregular which were made possible due to the existence of common interests and the traffic of influences between the parties interested in the case, who did it in their capacity as government officials, members of the external auditing firm of the imputed company,



and/or members of the Board of Directors of Lafarge INCEHSA, as the case of William Chong Wong,<sup>7</sup> David Palao,<sup>8</sup> José Manuel Cárcamo,<sup>9</sup> Mario Raúl Hung Pacheco, Rigoberto Chang Castillo,<sup>10</sup> and Carlos Onofre Sanabria Oyuela.<sup>11</sup>

It is noted that General (r) Mario Raúl Hung Pacheco was the Chief of the Honduras Military during a transition period which concluded with the effective subordination of the *Military* forces to civilian. Reports, accusations, independent studies and other literature have demonstrated that during such period a process of irregular financial operations was accelerated, which would have lead to the illicit enrichment of the principal military chiefs. The execution of these irregular operations substantially affected the patrimony of the IMP.

The mismanagement of the Institute of Military Provision, the acts of corruption and the crisis of the financial system which extended from the end of the 90's to the beginning of 2000, were factors for the majority of the IMP investments to be irregularly effected and administered, provoking the insolvency of almost all of its companies. Such situation had a dramatically negative impact in the public finances, due to the fact that, as previously mentioned, the Government of Honduras is responsible for compliance with the obligations of the IMP.

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<sup>7</sup> In addition to the ones already mentioned,. Chong Wong was also a member of the Board of Directors of the Central Bank of Honduras, of the Honduras government Economic Cabinet, and President of the Board of Directors of Hondutel [State-owned telecommunication company], among others.

<sup>8</sup> Director Partner of Palao William and Shareholders Representative of Lafarge-INCEHSA.

<sup>9</sup> Former Director of the Honduras IRS, agent of the case, former Partner and current advisor of Palao William. Likewise, his firm is the external auditor of the companies of the Maduro Group.

<sup>10</sup> Mario Raúl Hung Pacheco is former Chief of the Honduras Military, former President of the Board of Directors of the IMP, and former President and former Vice-President of the Board of Lafarge-INCEHSA. On the other hand, Rigoberto Chang Castillo, Esq. is the Secretary of the Board and Legal Advisor of Lafarge-INCEHSA, as well as Notary who authorized the Deed for the Sale of Stock subscribed between IMP and Asland (Lafarge) and the incorporation of CESUR [a subsidiary of Lafarge-INCEHSA, created to acquired CEMAR]. The close relationship between Hung Pacheco, Chong Wong and Chang Castillo started many years ago.

<sup>11</sup> Colonel (r) of the Honduras Military, former General Manager of the IMP y former member of the Board of Directors of Lafarge-INCEHSA.





The irregularities identified in the IMP operations, may be linked to the facts mentioned in this section.

The use of power mechanisms and political influence to make valid illicit acts is a general practice in Honduras; an example thereof was the issuance of the Law of Financial Equilibrium mentioned above.

Likewise, it is of public knowledge that the arrangement mechanisms applied in the case Lafarge-INCEHSA, were also applied in similar cases with other Large Taxpayers of the Honduran Treasury, in which the common denominator is the action of the partners of Palao William Auditing Firm



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# ARNOLD & PORTER LLP

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202.942.5000  
202.942.5999 Fax

555 Twelfth Street, NW  
Washington, DC 20004-1206

## Memorandum

**To:** Oscar Cerna  
**From:** Paolo Di Rosa  
Partner, Arnold & Porter LLP  
**Date:** June 4, 2009  
**Re:** State Department Response to Congressional Petition Regarding CEMAR

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At your request, Arnold & Porter LLP has reviewed documentation provided by you regarding your claim that your cement company, CEMAR, was indirectly expropriated by the Government of Honduras ("GOH") in 2004. You indicated that these documents have also been submitted to the U.S. Embassy in Honduras, as well as to the U.S. State Department ("State").

We have also reviewed copies of exchanges of correspondence between Members of the U.S. Congress and State regarding CEMAR, as well as a Congressional Petition dated September 16, 2008, signed by sixty-five members of the U.S. Congress, including House of Representatives Ways and Means Committee Chair Charles Rangel, Judiciary Committee Chair John Conyers, and House Foreign Affairs Committee Subcommittee on Western Hemisphere Affairs Chair Eliot Engel (hereafter, "Congressional Petition").

Finally, you have submitted for our review the following documents:  
(a) Criminal Complaint Against Acts of Corruption by Honduran officials, dated 16 February 2009, presented by Honduras Congresswoman Doris Gutierrez to the Honduran prosecutorial authorities, in which she denounces a Honduras Government conspiracy to eliminate CEMAR;  
(b) complaint dated 13 May 2009 submitted by you to the Honduran National Commissioner on Human Rights concerning violations of your human rights at the hands of the Honduran Government, and requesting protection; and c) legal analysis on Tax and Legal Aspects of Indirect Expropriation of CEMAR, prepared by the former Tax Division Chief for the Nicaraguan Office of PriceWaterhouseCoopers and the former General Counsel for the Nicaraguan IRS, implicating the Honduras Government and its agencies in the elimination of CEMAR.

Among other things, you have asked for guidance from our law firm on whether CEMAR's case could qualify for referral by the Secretary of State ("the Secretary") to the Foreign Claims Settlement Commission ("FCSC"), under the Secretary's discretionary authority pursuant to the relevant statutory provisions. In that regard, we have noted that the Congressional



Petition requested that the State Department refer the CEMAR case to the FCSC, which is an independent agency organized administratively as a component of the U.S. Department of Justice.

In particular, you have inquired whether a case with a single claimant (such as CEMAR's) could be submitted by the Secretary to the FCSC, which historically has addressed cases involving defined classes of claimants. As discussed in greater detail in our memorandum to you dated March 3, 2009, our research reveals no legal provision that requires any particular minimum number of claimants for a given class to be referred by the Secretary to the FCSC, or any prohibition concerning the referral of a single claim. Accordingly, we can discern no legal impediment for the Secretary to refer CEMAR's case to the FCSC, even though the class would be defined in a way that likely would contain only one claimant.

You have asked us to also comment on the correspondence between Congress and State, in light of your expressed belief that State has intentionally ignored and refused to acknowledge your claims of direct involvement by various Honduras officials and agencies in a scheme that led to the loss of your cement plant and investment in Honduras. You have asserted that such scheme was designed to protect GOH commercial interests in a partially state-owned cement company that is substantially controlled by the Honduras Military.

Based on our review of the materials you have provided and the relevant correspondence, we agree that the State Department's letters fail to address or even mention your charges of direct and wrongful involvement by GOH officials and agencies, or your broader allegations that the actions and omissions by such officials and agencies constitute failures by the GOH to meet its obligations under international law with respect to its treatment of CEMAR.

Finally, we have reviewed the U.S.-Honduras Bilateral Investment Treaty, signed in 1995, and in particular Article XIII thereof, which relates to tax matters. That provision enables investors to submit to arbitration under the BIT expropriation claims relating to tax issues, but only after such tax-related claims have been submitted to the U.S. Treasury Department ("Treasury") and the Honduran tax authority. It is our opinion that the CEMAR claim concerns an expropriation relating — at least in part — to a tax matter, and therefore qualifies under Article XIII to be reviewed by Treasury and its GOH counterpart for certification of expropriation. However, given the apparent role of the Honduras tax authority itself in CEMAR's mistreatment -- as discussed in the above-mentioned document titled "Tax and Legal Aspects of Indirect Expropriation of CEMAR" -- such authority's ability to render an impartial decision under Article XIII of the BIT seems questionable. Further, any review for certification by the U.S. Treasury and/or the Honduras tax authority is not preclusive of any other recourses to which CEMAR may resort at this time.//













## State Department Actions in Cerna Expropriation Case

1. From 2002-06, Cerna sought assistance from the U.S. Embassy in Honduras, alleging collusion between the Government of Honduras (GOH), the Honduras Military and the local cement cartel (including INCEHSA-42% owned by the Honduras Military) to eliminate Cerna's \$27 million U.S. Investment (CEMAR) from the market. The Embassy failed to recognize any direct and illegal GOH involvement, despite evidence of taxation abuses in collusion with the Military and its external auditors (Palao William) that led to the expropriation of the U.S. investment. The Embassy accepted the GOH's position that the dispute was limited to predatory pricing only, and Honduras lacked legislation to protect Cerna.
2. In February 2006, Ambassador Charles Ford (2005-08), stated in the local press: "The existing monopoly caused the closing of the plant [CEMAR]...The Justice System in Honduras is not totally transparent, and there is no assurance of getting fair justice." "CEMAR came to produce cement in Honduras, and the two companies [INCEHSA and CENOSA] did whatever it took to prevent CEMAR from succeeding."
3. Later in 2006, however, Ambassador Ford failed to recognize past and continuing wrongful involvement of powerful GOH agencies, including: i) illegal prosecution of Cerna, ii) temporary confiscation of CEMAR assets without due process, iii) infringement of CEMAR corporate name, iv) harassment by Honduras IRS in collusion with the part-military cement company and its auditing firm and v) illegal reduction of a tax liability of part-military cement company, as implicated by the Honduras Anti-Corruption Agency, the Attorney General, & the criminal court.
4. In September 2006, Cerna presented Ford with documented evidence of illegal GOH actions. The GOH Intellectual Property Registry and the Honduras IRS, acting in collusion with the part-military cement co., & its auditors, took a series of prejudicial actions against CEMAR and Cerna personally. Honduras Anti-Corruption Agency, found the \$10 million tax evasion aided the part-military cement co. in the elimination of CEMAR.
5. The conspiracy against CEMAR by the Honduras government through abuse of its taxation authority to eliminate CEMAR is tantamount to expropriation. Articles XIII (Taxation) of the U.S.-Honduras Bilateral Investment Treaty (BIT 2001), entitles Cerna to a resolution of this tax related claims prior to and separate from any rights to arbitration of any other claims. Unfortunately, the Embassy and the State Department have ignored the abuse of taxation authority claim and the intended effect of BIT 2001.
6. From 2006-08, Congress wrote to Ambassador Ford, the State Department and Honduras President Zelaya on Cerna's behalf, raising questions about the GOH's lack of response over the last three years. The letters included allegations of illegal GOH activities (documented by the previous Honduras Attorney General, Ministry of Commerce and Ministry of Justice) against CEMAR including flagrant violations of Cerna's human rights.
7. In 2008, The State Department in response to Congressional letters misleadingly asserts that Cerna's claims were based on predatory pricing alone, and continues to ignore the other more serious charges of involvement by the Honduras government, its agencies and military. In letters to Chairmen Engel and Burton, and to Senator Cornyn, the State Department has erroneously stated, "Mr. Cerna asserts that the Government of Honduras participated in predatory pricing by a cement duopoly that attacked this company by dropping prices until he was forced out of business, then raising prices above original levels. Mr. Cerna contends that this predatory pricing was tantamount to expropriation". This statement would be true if it also referred to the more serious direct and wrongful government acts, which, together with predatory pricing, were tantamount to expropriation. But references to these more serious claims are intentionally omitted.
8. In February 2008, Cerna received from Rep. Ros-Lehtinen a report from the Library of Congress outlining the laws in effect in Honduras during 2000-04 regarding anti-competitive practices (predatory pricing), which include the Honduras Constitution(six articles that prohibit anti-competitive practices) and numerous other local and international laws. This report demonstrated the inaccuracy of Ambassador Ford's statements to Chairmen Dan Burton in 2006 (and of the GOH position) regarding the lack of internal legislation to protect Cerna. The report also supported all previous legal analyses presented by Cerna to Ford in 2006 when the Embassy stated it had "no legal advisor" and was "unable to continue with the case".



9. In July 2008, former Ambassador to Honduras Larry Palmer (2002-05), attested to Congress as to Cerna's claims of expropriation as outlined in a legal analysis prepared by the Greenberg Traurig law firm. Ambassador Palmer stated in his testimonial letter that Cerna had no realistic remedy in Honduras, as the judicial system is subject to influence from the same powers responsible for the improper acts in question.
10. In Oct '08, Chairmen Engel, Rangel, and Conyers sent a Petition to the Secretary of State signed by 65 Members of Congress requesting that the Cerna case be transferred from State to the Justice Department.
11. In Nov '08, the request was declined based on faulty and misleading recitals of the key assertions and facts by the State Department, which again intentionally omitted the more serious charges, and once more labeled the case as one of predatory pricing only.
12. In Jan '09, the Office of Congresswoman Ileana Ros-Lehtinen obtained a copy of the State Department Annual Report to Congress (pursuant to section 527(f) of the Foreign Relations Authorization Act (the 'FRAA')) detailing expropriation and other investment disputes of U.S. citizens against foreign governments. The staff members noted that in both the 2007 and 2008 Reports, the CEMAR case was omitted.
13. In Feb '09, Cerna travelled to Honduras to meet with U.S. Ambassador Hugo Llorens, accompanied by U.S. and Honduras counsel. During the meeting, Cerna reiterated his claims of direct and illegal Honduras government involvement by senior civilian and military officials acting in a premeditated manner against CEMAR, to protect a company owned almost 50% by the Honduras Military, and using government powers to eliminate CEMAR from the market, in violation of U.S. laws and treaties, including BIT 2001, and the Foreign Corrupt Practices Act. Cerna's U.S. counsel, stated that the State Department letters over the last several years to the U.S. Congress, suspiciously fails to mention Cerna's claims of direct government involvement through its powerful agencies in the elimination of CEMAR.
14. During the February '09 meeting at the U.S. Embassy in Honduras, Cerna presented the Ambassador with a letter and a dossier entitled "Indirect Expropriation of a U.S. Investment by the Government of Honduras". Attached was a "Criminal Complaint against Acts of Corruption" brought by Congresswoman Doris Gutierrez. This Complaint referred to an illegal conspiracy by the Honduras government including its IRS, in collusion with the part-military owned cement company, Lafarge-INCEHSA, and its external auditors, Palao William, to eliminate CEMAR from the Honduras market. A separate scheme among the same parties to defraud the Honduras government of more than \$15 million in taxes was included in the Complaint. A taped conversation confirming an illegal predatory pricing scheme by Lafarge-INCEHSA against CEMAR was also referenced in the Complaint. Congresswoman Gutierrez requested that specialized U.S. Agencies authenticate the tape, and Cerna reiterated this request of securing an FBI investigation, at the meeting. Ambassador Llorens rejected any investigation and expressed lack of interest in any assistance.
15. In Mar '09, Ambassador Llorens sent a response letter to Cerna but failed to mention any of the key points discussed at the meeting or in the dossier. The sole purpose of his letter was to refer Cerna to arbitration once again.
16. In summary: (i) the Embassy denied assistance to Cerna at a critical early juncture in the case, based on its erroneous interpretation of applicable Honduras laws; (ii) the State Department has consistently and arbitrarily refused to recognize direct and illegal involvement by GOH, its agencies and the Honduras Military, tantamount to an expropriation, including well-documented tax abuses by Honduras IRS in collusion with the part-military cement company and its auditors; intellectual property rights and human rights violations that are tantamount to an expropriation and other convincing evidence of systematic corruption; (iii) the Department has intentionally distorted Cerna's claims to make it appear that they are based on predatory pricing only, as the basis for his expropriation claim; (iv) the Department has denied assistance to Cerna on the inaccurate and bad faith grounds that Honduras had no legislation protecting Cerna (see Library of Congress Report 2008); (v) the Department seems to be protecting the GOH, despite Honduras' non-compliance with MCC "Corruption and Rule of Law" Criteria; and despite the fact that MCC funds are currently and principally benefiting the part-military cement company, the exact party responsible for the elimination of Cerna's U.S. Investment (CEMAR); and (vi) ironically, present and former Honduras Ministers of the Presidency (who are closely associated with the cement duopoly/Cartel and the Military) control the funds received from the MCC in Honduras, a serious conflict of interest that violate U.S. laws.





United States Department of State

Washington, D.C. 20520

Dear Mr. Rangel:

Thank you for your letter of December 11, 2007 concerning your constituent, Mr. Oscar Cerna, and his concerns regarding his treatment as an investor in Honduras.

The State Department is well aware of Mr. Cerna's investment dispute. The U.S. Embassy in Tegucigalpa has met with Mr. Cerna on several occasions including, three meetings with Ambassador Ford since 2005, and several meetings with the then Economic Counselor prior to April 2007. On December 13, 2007, representatives from the Office of Central American Affairs and the Office of the Legal Adviser, Office of International Claims and Investment Disputes, and a representative from the Department of Commerce met with Mr. Cerna and his legal counsel.

During the December 13 meeting, Mr. Cerna outlined his desire for the U.S. Embassy to convince the Government of Honduras to enter into a negotiated settlement of his claim. Mr. Cerna asserts that the Government of Honduras participated in predatory pricing by a cement duopoly that attacked his company by dropping prices until he was forced out of business, then raising prices above original levels. Mr. Cerna contends that this predatory pricing was tantamount to expropriation. We have not concluded that an expropriation occurred, but we believe Mr. Cerna could have an investor-state claim under the U.S.-Honduras Bilateral Investment Treaty.

We suggested to Mr. Cerna that he utilize the options that the U.S. Government has negotiated in order to protect foreign investors, namely to file a claim for international arbitration under the Bilateral Investment Treaty. Mr. Cerna has stated that he does not want to bring a claim under

The Honorable  
Charles B. Rangel,  
House of Representatives.





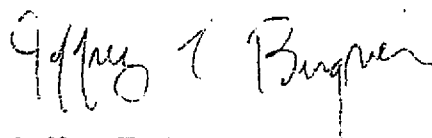
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the Treaty, and that he does not want to file a claim in the Honduran courts. Instead, Mr. Cerna has asked the United States Government to persuade the Government of Honduras to enter into an ad-hoc negotiation process with him. We expressed our concern to Mr. Cerna that if he were to enter into an ad-hoc process there would be little the U.S. Government could do to protect his interests.

Finally, we reiterated to Mr. Cerna that Ambassador Ford and other U.S. Government officials have raised his concerns with President Zelaya and other Honduran officials, but without further action on his part, his claim appears to have reached an impasse.

We hope this information is useful to you. Please do not hesitate to contact us again if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey T. Bergner". The signature is fluid and cursive, with the first name "Jeffrey" and last name "Bergner" clearly distinguishable.

Jeffrey T. Bergner  
Assistant Secretary  
Legislative Affairs





United States Department of State

*Washington, D.C. 20520*

JUN 5 - 2008

Dear Mr. Burton:

Thank you for your letter of February 14 on behalf of your constituent, Mr. Oscar Cerna, and his concerns regarding his treatment as an investor in Honduras. We sincerely regret the delay in responding to your inquiry.

The State Department has been closely monitoring Mr. Cerna's dispute with the Honduran Government. The U.S. Embassy in Tegucigalpa has met with Mr. Cerna on multiple occasions, including three meetings with Ambassador Ford since 2005, and several meetings with the then-Economic Counselor prior to April 2007. On December 13, 2007, representatives from the Office of Central American Affairs and the Office of the Legal Adviser, Office of International Claims and Investment Disputes, and a representative from the Department of Commerce met with Mr. Cerna and his legal counsel.

During the December 13 meeting, Mr. Cerna outlined his desire for the U.S. Embassy to convince the Government of Honduras to enter into a negotiated settlement of his claim. Mr. Cerna asserts that the Government of Honduras participated in predatory pricing by a cement duopoly that attacked his company by dropping prices until he was forced out of business, then raising prices above original levels. Mr. Cerna contends that this predatory pricing was tantamount to expropriation.

We reiterated to Mr. Cerna that Ambassador Ford and other U.S. Government officials have raised his concerns with President Zelaya and other Honduran officials, but the Government of Honduras does not appear willing to discuss settlement of his claim. As with all outstanding disputes between a U.S. national and a foreign government, we have advised Mr. Cerna that as the investor, he is responsible for pursuing legal remedies available to him, either through the local courts of Honduras or through

The Honorable  
Dan Burton,  
House of Representatives.



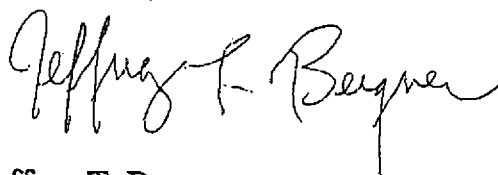
- 2 -

international arbitration under the Bilateral Investment Treaty, and that he should consult with legal counsel for that purpose. In addition, so long as he has not exhausted available remedies, the U.S. Government is not in a position to present its views on the merits of the dispute, including a determination as to whether an expropriation has occurred.

The Department continues to stand ready to assist as appropriate. However, Mr. Cerna has informed us that he does not wish to file a claim in Honduran court or bring a claim through arbitration under the Treaty. Without further action on Mr. Cerna's part, there appears to be nothing further that can be done to advance his claim.

We hope this information is helpful to you. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script, reading "Jeffrey T. Bergner". The signature is written in dark ink and is positioned above the printed name and title.

Jeffrey T. Bergner  
Assistant Secretary  
Legislative Affairs



12003



JUL 12 2008

United States Department of State  
Washington, D.C. 20520

Dear Senator Cornyn:

JUN 27 2008

Thank you for your letter of May 27 on behalf of your constituent James Pedison regarding Mr. Oscar Cerna's treatment as an investor in Honduras.

The State Department has been closely monitoring Mr. Cerna's dispute and the U.S. Ambassador in Tegucigalpa met with Mr. Cerna on three occasions to discuss his case. He also met with the then-Economic Counselor several times prior to April 2007. On December 13, 2007, representatives from the Office of Central American Affairs and the Office of the Legal Adviser, Office of International Claims and Investment Disputes, and a representative from the Department of Commerce met with Mr. Cerna and his legal counsel.

During the December 13 meeting, Mr. Cerna expressed his hope that the U.S. Embassy would be able to convince the Government of Honduras to enter into a negotiated settlement of his claim. Mr. Cerna asserts that the Government of Honduras participated in predatory pricing by a cement duopoly that attacked his company by dropping prices until he was forced out of business, then raising prices above original levels. Mr. Cerna contends that this predatory pricing was tantamount to expropriation.

We reiterated to Mr. Cerna that Ambassador Ford and other U.S. Government officials have raised his concerns with President Zelaya and other Honduran officials, but the Government of Honduras does not appear willing to discuss settlement of his claim. As with all outstanding disputes between a U.S. national and a foreign government, we have advised Mr. Cerna that, as the investor, he needs to pursue all of the legal remedies available to him. He can do so either through the local courts of Honduras or through international arbitration under the Bilateral Investment Treaty. We have recommended that he consult with legal counsel for that purpose.

The Honorable  
John Cornyn,  
United States Senate.





ENDECO

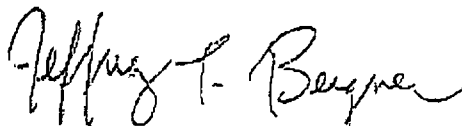
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-2-

The Department continues to stand ready to assist as appropriate and possible. However, Mr. Cerna has informed us that he does not wish to file a claim in Honduran court or bring a claim through arbitration under the Treaty. Without further action on Mr. Cerna's part, there appears to be nothing further that can be done to advance his claim at this time.

We hope this information is helpful to you. Please do not hesitate to contact us if we can be of further assistance on this or any other matter.

Sincerely,



Jeffrey T. Bergner  
Assistant Secretary  
Legislative Affairs





United States Department of State

Washington, D.C. 20520

107 14 000

Dear Mr. Engel:

Thank you for your letter of September 16 on behalf of Mr. Oscar Cerna, who claims that his investment was effectively expropriated by the Government of Honduras. We sincerely regret the delay in responding to your inquiry.

The State Department has been very active over the last three years in trying to help Mr. Cerna resolve his investment claim against the Government of Honduras. Previous U.S. Ambassadors to Honduras, Larry Palmer and Charles Ford, personally raised Mr. Cerna's case at the highest levels of the Honduran Government on several occasions and urged that the government address Mr. Cerna's claim directly with him. The current Ambassador to Honduras, Hugo Llorens, raised this issue with the Minister of Commerce and Industry this month. We will continue to do everything we can via diplomatic channels to encourage the Honduran government to settle its dispute with Mr. Cerna. At the same time, we have on several occasions suggested to Mr. Cerna that if a direct settlement with the government is not possible, he should take steps to exercise all available rights in the Honduran courts or under the U.S.-Honduras Bilateral Investment Treaty ("BIT"). Attached for your information is a chronological list of actions taken by the Department on behalf of Mr. Cerna.

You have requested that the Department of State refer Mr. Cerna's claim to the Foreign Claims Settlement Commission of the United States ("FCSC"). The Department of State does not believe that such an action is warranted at this time, when Mr. Cerna has not yet taken any steps to exhaust other remedies that he may have, including remedies that are specifically provided under the BIT.

The Honorable  
Eliot L. Engel,  
House of Representatives.



- 2 -

On several occasions, the Department has urged Mr. Cerna to exhaust all legal remedies that may be available to him through the Honduran court system or under the U.S.-Honduran BIT. There are important reasons why the United States government does not espouse claims against a foreign government until a U.S. investor has exhausted all available legal remedies or has demonstrated that doing so is futile.

First, the exhaustion requirement affords the host government the opportunity to provide redress for the injury through its own legal system. In addition to demonstrating respect for the sovereignty of foreign governments over local investment, and a desire that foreign governments show the same respect for U.S. sovereignty, this requirement also helps refine issues of fact and law for purposes of a direct settlement between the parties. The exhaustion principle recognizes that in most cases disputes can be resolved at the national level rather than rising to an international dispute between governments.

Second, as a matter of international comity, the exhaustion requirement ensures that the U.S. government is not put in the position of sitting in judgment over the official acts of a foreign government whenever claims arise related to U.S. investors. Because increased foreign trade and investment depend on investor confidence, countries ultimately have an interest in providing fair and effective local remedies to resolve claims, and U.S. policy is to promote such remedies. Where remedies are available, American investors must be prepared to take their disputes to the judicial and arbitral forums provided for them.

Finally, the exhaustion requirement is a fundamental component of the international law of state responsibility. The Department is not in a position to espouse and seek settlement of Mr. Cerna's claim under international law until the exhaustion requirement is satisfied.

We understand that the cost and delay of local proceedings can be frustrating to U.S. investors, but these considerations are not sufficient under international law to excuse an investor from first seeking relief in local courts. The United States would carefully evaluate evidence that a local court system is unable to provide effective redress to a U.S. investor. A determination of ineffectiveness or futility, therefore, would depend on individual circumstances that the Department must address on a case-by-case basis. At this point we have no basis to think that a remedy is not available to Mr. Cerna in Honduras.



- 3 -

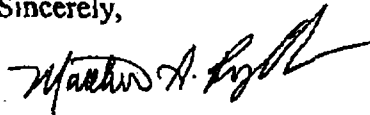
In addition to local judicial remedies, where the United States has concluded a BIT or Free Trade Agreement (FTA) investment chapter with a host government, the U.S. investor may be able to pursue a claim through international arbitration rather than go through local courts or administrative tribunals. We have urged Mr. Cerna to consult with legal counsel to determine whether his claim is also covered by the U.S.-Honduras BIT. Such a forum, if available, would be independent of the Honduran legal system and is routinely used by investors throughout the world.

The Foreign Claims Settlement Commission was created by Congress to adjudicate claims of U.S. nationals included in claims settlement agreements entered into by the Secretary of State with foreign countries, 22 U.S.C. 1623(a). Since 1954, the FCSC has performed this function for hundreds of thousands of claims involving settlements with over 15 countries. The FCSC may also adjudicate categories of claims of U.S. nationals against foreign countries when directed by the Congress or at the request of the Secretary of State, usually in anticipation of the negotiation of a claims settlement agreement. There is no specific provision for the FCSC to adjudicate a single claim against a foreign government in the absence of a claims settlement agreement.

As discussed above, until Mr. Cerna has exhausted his available remedies, the Department of State will not be in a position to consider negotiation of a formal claims settlement agreement involving Mr. Cerna's claim against the Government of Honduras. It is therefore premature to consider any role for the FCSC in resolving Mr. Cerna's claim.

We hope that this information is helpful to you in discussions with Mr. Cerna. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,



Matthew A. Reynolds  
Assistant Secretary  
Legislative Affairs

Enclosure:

As stated.





**Embassy Assistance/Advocacy on Behalf of Mr. Oscar Cerna/CEMAR**

- *January 2002* -- Local counsel for Mr. Cerna initiates contact with the Embassy, requesting assistance with a fine imposed on Mr. Cerna's company, Cemento América, S.A. de C.V. (CEMAR) by Honduran Attorney General Carlos Humberto Ariza Mejía.
- *January 2002* -- Then-Deputy Chief of Mission (DCM) Paul Trivelli meets with Attorney General Mejía to discuss the fine. As a result, the Attorney General requests that the employee handling the case present his basis for issuing the fine.
- *February 2002* -- At Mr. Cerna's request, the Embassy arranges a meeting with the Director of DEI (the equivalent of the IRS) to discuss the importation of machinery/equipment for CEMAR. As a result, DEI grants Mr. Cerna's request to extend his contract to import machinery/equipment.
- *2003* -- Mr. Cerna begins to contact Embassy about uncompetitive behavior by one of his competitors, LaFarge (large French cement company).
- *January 2004* -- Then-Ambassador Palmer meets with the French ambassador to inform him of LaFarge's unfair practices. Then-Economic Counselor Robin Mathewman contacts the Honduran Minister of Investment and Minister of Industry to inform them of the damaging effects of this anti-competitive behavior on existing and future U.S. investment.
- *February 2004* -- At Mr. Cerna's invitation, Ambassador Palmer visits the CEMAR plant in San Lorenzo, Valle.
- *March 2004* -- Economic Counselor Robin Mathewman continues to speak with high level government officials and private sector groups about the anti-competitive behavior by LaFarge and CENOSA (another CEMAR competitor).
- *2006* -- Throughout 2006, Ambassador Ford references the CERNA case in all his economic speeches in Honduras as an example of a barrier to investment. Ambassador Ford also raises the issue with President Zelaya in private meetings during the first six months of the Zelaya administration.
- *July 2006* -- In response to a request for assistance by U.S. Congressman Dan Burton on behalf of Mr. Cerna, Ambassador Ford explains that there is no applicable law in Honduras that prohibits anti-competitive practices, except for a line in the Honduran Constitution referring to unfair competition.
- *December 2007* -- In response to a request from U.S. Congressman Charles Rangel, Ambassador Ford explains that Mr. Cerna's claim has been raised at the highest levels but that there has been no action on their part. Representatives from the Office of Central American Affairs, the Office of the Legal Adviser, and a representative from the Department of Commerce meet with Mr. Cerna and his legal counsel.
- *August 2008* -- Ambassador-designee Hugo Llorens meets with Mr. Cerna.
- *September 2008* -- Ambassador Llorens meets with Mr. Cerna.
- *November 2008* -- Ambassador Llorens met with the Minister of Trade and Industry and raised Mr. Cerna's claim.



## OSCAR M. CERNA

April 29, 2009

Honorable Eliot Engel  
U.S. House of Representatives  
Washington, D.C.

Re: State Department Response (11/19/08) to Congressional Letter

Dear Chairman Engel,

This latest letter regrettably continues to omit any mention of, or to even acknowledge my most serious allegations - that Honduras government officials, through their powerful agencies (IRS, Judicial System, Para-Military Police and Intellectual Property Registry), were directly involved in the elimination of CEMAR, in a manner rising to expropriation. The Department has intentionally mischaracterized my case, and in its responses to letters from Chairman Rangel, Burton and Senator Cornyn, has stated:

***Mr. Cerna asserts that the Government of Honduras participated in predatory pricing by a cement duopoly that attacked his company by dropping prices until he was forced out of business, then raising prices above original levels. Mr. Cerna contends that this predatory pricing was tantamount to expropriation.***

In other words, the Department has once again misquoted me and distorted my words, to make it appear "on the record" that my claims are based solely on a commercial dispute involving predatory pricing among private competitors. (The letter is inaccurate and misleading in other ways, which are outlined in the next page).

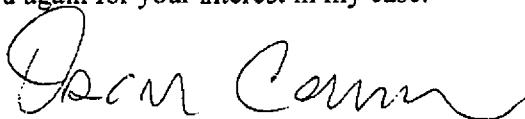
For the record, again, we are alleging direct Honduras government involvement, by senior civilian and military officials acting in a premeditated manner against CEMAR, to protect a company owned almost 50% by the Honduras military, and using government powers to eliminate CEMAR from the market, in violation of U.S. laws and treaties, including BIT, the Patriot Act and the Foreign Corrupt Practices Act.

Our claims have now been corroborated in a "Criminal Complaint against Acts of Corruption", brought by Rep. Doris Gutierrez before a Special Prosecutor in Honduras, relating to: a) a conspiracy by the Honduras government including its IRS, in collusion with the part-military cement company and its external auditors to eliminate my company CEMAR from the Honduras market; and b) a separate scheme among those same parties to defraud the government of more than \$15 million in taxes.

Between this criminal filing, and related Honduras government investigation reports, the parties responsible for the elimination of CEMAR have been officially identified. There is certainly no need to duplicate these findings in an unnecessary, lengthy and costly arbitration, or in litigation in Honduras courts, which are known to be subject to corruption and influence.

Mr. Chairman, the State Department's conduct has been extremely prejudicial and costly to me and my family, expanding over four years. This is a time of great change in our country, led by the new Obama-Biden Administration. In this era of transformation, and in light of the enormous economic hardship we Americans are experiencing, I request your intervention to cause the Department to acknowledge the truth, to certify expropriation, and/or refer my case to the Justice Department.

I thank you again for your interest in my case.





April 29, 2009

## **Inaccurate and Misleading Statements in State Department Letter**

1. The letter discusses at length the "exhaustion requirement" (in excerpts copy-pasted from David Nelson's Testimony to the House Foreign Affairs on "State Department Assistance in Foreign Commercial and Investment Disputes, July 17, 2008) but omits key language: "if an investor can demonstrate that pursuit of a remedy to a national court system would be ineffective or futile, he may be excused from the requirement to exhaust local remedies", based on convincing evidence of systematic corruption. The State Department and other U.S. agencies have issued numerous reports documenting systematic corruption in Honduras; essentially proving the "futility" requirement themselves.
2. The chronology (attached to the Department's letter) is incorrect as follows: a) Ambassador Charles Ford (U.S. Ambassador to Honduras 2005-2008) replied to Rep. Burton that no laws on anti-competitive practices existed in Honduras in 2001-04, contrary to a Library of Congress Report requested by Rep. Rös-Lehtinen; b) The reference to "fines" is another distortion, as rather than fines, I was subjected to illegal prosecution and an arrest warrant issued against me personally, and confiscation of CEMAR assets by Para-Military Police; c) the chronology omits that at his meeting with the French Ambassador, Ambassador Larry Palmer (U.S. Ambassador to Honduras 2002-2005) was informed that the Honduras military was behind the scheme. Mr. Palmer was the U.S. Ambassador when the Honduras government conspiracy took place.
3. The State Department is mistaken with regard to the jurisdiction of the Justice Department (FCSC). The Commission is fully authorized to adjudicate an individual claim.
4. The letter neglects to address any of the official reports on the illegal Honduras government acts involved in the elimination of CEMAR, and implicating the part-military cement company.
5. The letter neglects to address Ambassador Larry Palmer's testimonial letter to Congress confirming the involvement of the Honduras government in the expropriation of CEMAR, and the corrupt Honduras justice system.
6. The Department fails to even acknowledge the detailed legal analysis prepared by the Greenberg Traurig law firm, documenting the direct and wrongful involvement of the Honduras government, its agencies and military.
7. The letter omits: Honduras failed MCC corruption indicators; MCC funding benefits the same part-military owned cement company responsible for eliminating CEMAR; and present and former Ministers of the Presidency and MCC representatives are closely affiliated with the cement cartel and the Military and control MCC funds received in Honduras.
8. The State Department letter again, refuses to acknowledge that "tax matters" are also an issue in Cerna's expropriation case (as referenced in BIT 2001, Article XIII, which allows for relief prior to any arbitration), due to the role of the Honduras IRS in collusion with the part-military cement company and its auditing firm. This Article calls for the transfer of the case to the competent authorities of both countries (Honduras and the U.S). The "competent tax authority" of the United States is the Assistant Secretary of the Treasury for Tax Policy, who will make such a determination only after consultation with the Inter-Agency Staff Coordinating Group on Expropriations.



## USTR ANNUAL NTE REPORT 2007 – HONDURAS

### OTHER BARRIERS

Historically, U.S. firms and private citizens have found corruption to be a serious problem, which complicates doing business in Honduras. Corruption appears to be most prevalent in the areas of government procurement, the buying and selling of real estate (particularly land title transfers), performance requirements, and the regulatory system. Honduras' judicial system is subject to influence, and the resolution of investment and business disputes involving foreigners is largely non-transparent. The anti-corruption provisions in the CAFTA-DR require each government to ensure under its domestic law that bribery in trade-related matters is treated as a criminal offense, or is subject to comparable penalties.

### Anti-Competitive Practices

U.S. industry has expressed concern that investors who set up business in Honduras have at times found themselves subject to practices that, in the United States, might be considered anticompetitive. For example, in 2003, a U.S.-Japanese joint venture established a cement company in Honduras, challenging the duopoly enjoyed by the two Honduran companies in the market. In 2004, the investor complained that the existing duopoly in the sector was engaging in anti-competitive predatory pricing practices. Despite the conclusions of an investigation by the Ministry of Commerce and the Attorney General's office that the duopoly "seeing the reduction in its market share, began to apply predatory pricing with the intention of eliminating [the U.S. firm - CEMAR] from the market," no subsequent prosecution was ever brought and the U.S. firm was forced to leave the Honduran market. After the firm left the market, prices increased dramatically to well above their previous level, until they were subsequently regulated by Honduran government action. There have also been allegations that steel prices are also fixed in Honduras, and on a regional basis there are reports of price collusion by the major steel producers. In 2006, the Honduran government passed a Competition law, establishing an anti-trust enforcement commission to combat such abuses. However, the government delayed for more than six months in naming the commissioners. As of March 2007, the Commission has received some funding, begun hiring staff and secured permanent office space.

*Source: Office of the United States Trade Representative. National Trade Estimate Report on Foreign Trade Barriers, 2007; April 2, 2007, p. 265.*





## USTR ANNUAL NTE REPORT 2006 – HONDURAS

### OTHER BARRIERS

Historically, U.S. firms and private citizens have found corruption to be a problem which has seriously complicated doing business in Honduras. Corruption has appeared to be most prevalent in the areas of government procurement, the buying and selling of real estate (particularly land title transfers), performance requirements, and the regulatory system. Honduras' judicial system is subject to influence, and the resolution of investment and business disputes involving foreigners is largely non-transparent. Currently, with considerable U.S. help, the Honduran government is reforming the judicial system and fighting corruption; however, progress has been very slow and serious problems remain. In April 2004, Honduras was chosen as eligible to apply for Millennium Challenge Account (MCA) assistance. In June 2005, the Government of Honduras and the Millennium Challenge Corporation signed a program compact for \$215 million. MCA countries are deemed to have shown a commitment to ruling justly (including by tackling corruption), investing in their people, and encouraging economic freedom.

The anti-corruption provisions in the CAFTA-DR require each government to ensure that bribery in matters affecting trade and investment is treated as a criminal offense, or is subject to comparable penalties, under its law.

### Anti-Competitive Practices

U.S. industry has expressed concern that investors who set up business in Honduras have at times found themselves subject to forms of competition that, in the United States, would be considered anticompetitive. For example, in 2003, a U.S.-Japanese joint venture established a cement company in Honduras, challenging the duopoly enjoyed by the two Honduran companies in the market. The new joint venture investment accused the two established companies of predatory pricing that brought local cement prices below the cost of production. After the U.S.-Japanese venture dropped out of the market, prices leapt up to well above their previous level, until they were subsequently regulated by GOH action. Steel prices are also fixed in Honduras, and on a regional basis there are reports of price collusion by the major steel producers. In fall of this year, the Competition Law was passed which regulates against predatory pricing and other monopolistic practices in Honduras, but it will take some time for this law (and the GOH institutions that support it) to come fully into effect.

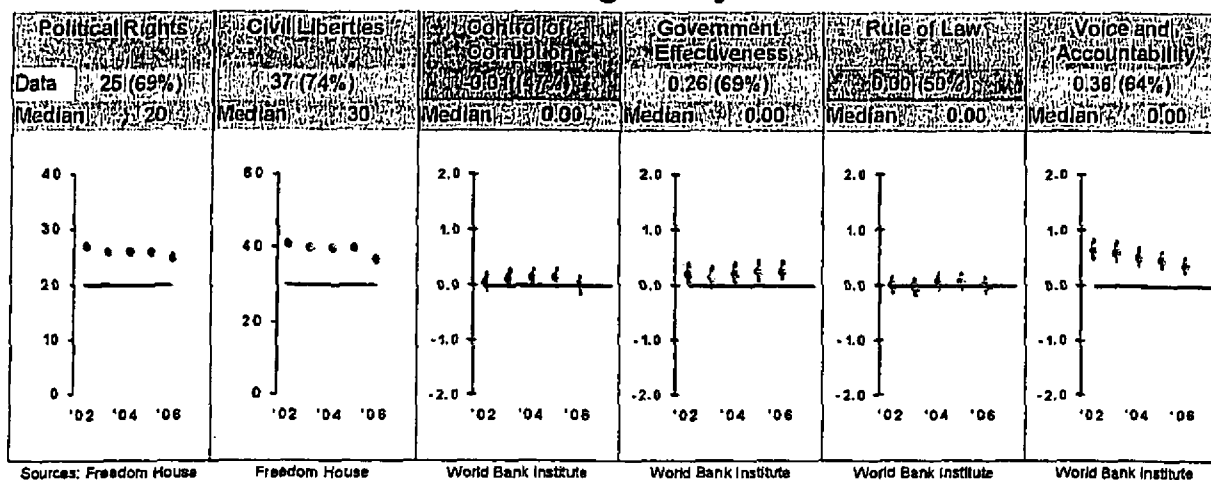
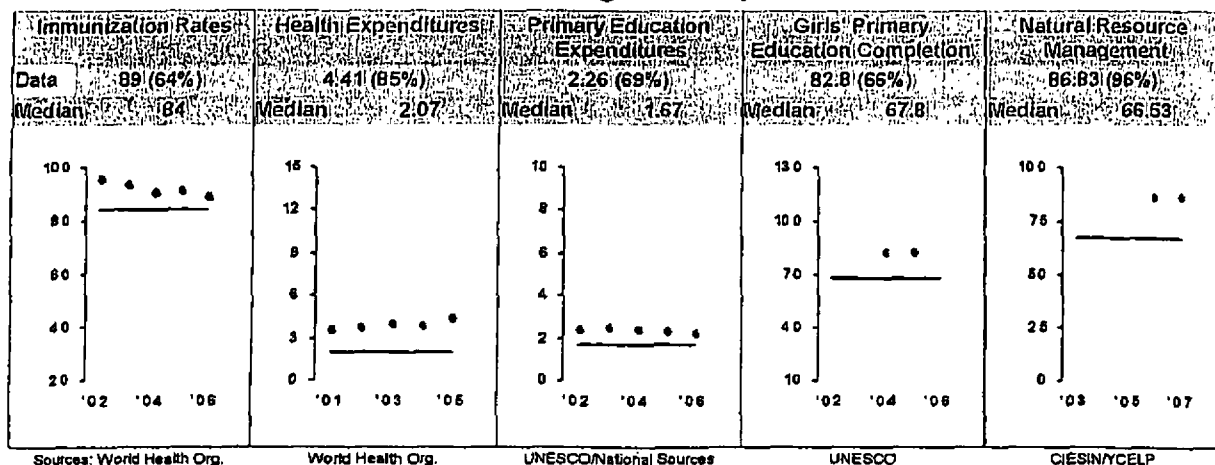
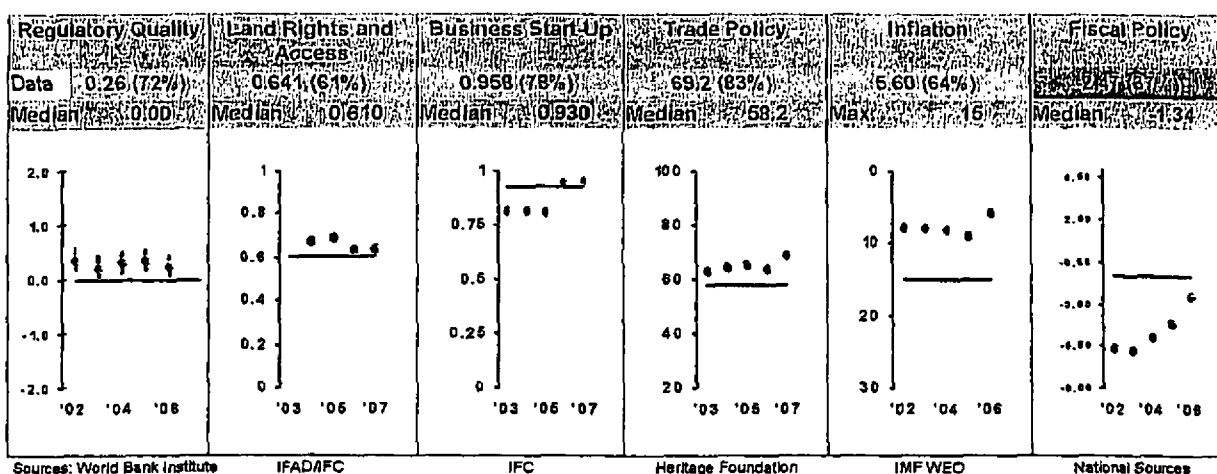
*Source: Office of the United States Trade Representative. National Trade Estimate Report on Foreign Trade Barriers, 2006; March 30, 2006, pp. 294-295.*



**Honduras FY08**

Population: 7,204,723

GNI/Cap: \$1,200 LIC

**Ruling Justly****Investing in People****Economic Freedom**

How to Read this Scorecard: Each MCC Candidate Country receives an annual scorecard assessing its performance in 3 policy categories: Ruling Justly, Investing in People, and Economic Freedom. Under the name of each indicator is the country's score and percentile ranking in its income peer group (0% is worst; 50% is the median; 100% is best). Under each country's percentile ranking is the peer group median. Country performance is evaluated relative to the peer group median and passing scores, or scores above the median, are represented with green. Failing scores, or scores at or below the median, are represented with red. The black line that runs along the horizontal axis represents the peer group median. Each World Bank Institute indicator is accompanied by a margin of error, which is represented by the vertical blue bar.

For more information regarding the Millennium Challenge Account Selection Process and these indicators, please consult MCC's website: [www.mcc.gov](http://www.mcc.gov)

10/10/2007





**MILLENNIUM  
CHALLENGE  
CORPORATION**  
REDUCING POVERTY THROUGH GROWTH

**Compact Implementation  
Status Report**  
April-June 2008 [www.mcc.gov](http://www.mcc.gov)

## Honduras Compact Progress

More than 1,700 farmers have received technical assistance in improved production, business skills and finance, and postharvest activities. These producers have already planted almost 2,000 hectares with high-value horticultural crops.

Credit lines have been approved for two regulated micro-credit institutions that will provide loans to program farmers

As part of the secondary roads activity, 29 of the 31 municipalities whose proposals for rural road improvements were approved by MCA-Honduras have submitted required co-financing

Bidding and contract negotiation for the construction of the Northern segment of the CA-5 Highway are in progress. Construction is expected to begin on the project in July

## Highlights on the Ground

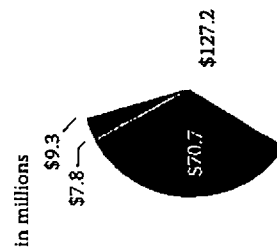
On February 28, the Government of Honduras presented its first Quarterly Progress Report for the Anti-Corruption Plan. The Plan included external audits of the state owned telecommunications and electricity companies, which faced allegations of improper management over the last year

### Compact At-A-Glance

Signed ..... 6/13/2005  
Entry Into Force ..... 9/29/2005

The five-year, \$245 million compact's two main objectives are to increase the productivity and business skills of farmers and to reduce transportation costs between targeted production centers and national, regional and global markets

### Obligations by Project



**\$43,078,965 total contract commitments  
\$21,968,672 disbursed to date**

### Country At-A-Glance

Population ..... 7,354,979\*  
GNI per Capita ..... \$1,190\*



On the Web:  
[www.mcc.gov](http://www.mcc.gov)  
[www.mcahonduras.hn](http://www.mcahonduras.hn)

\*World Development Indicators, World Bank, 2006

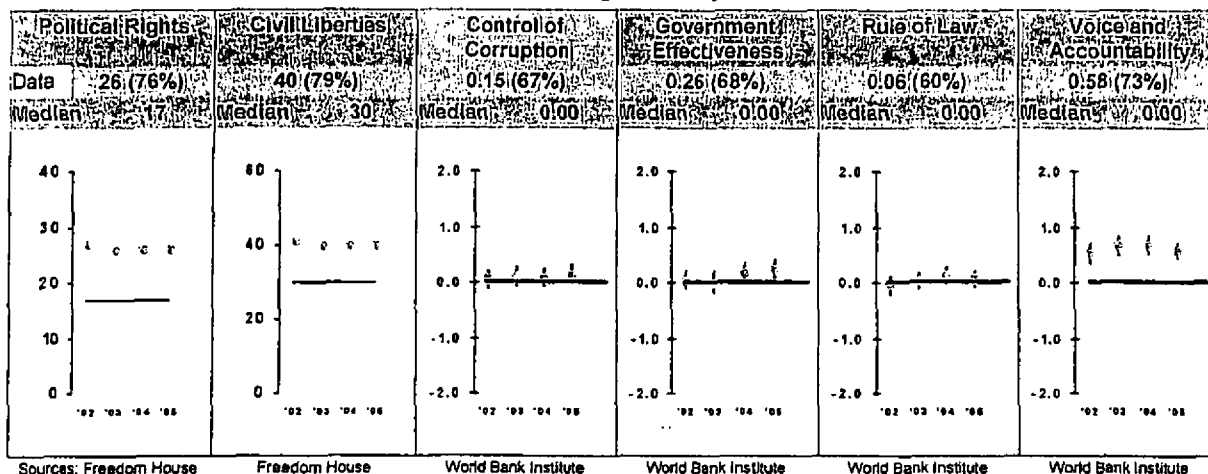


MILLENNIUM  
CHALLENGE  
CORPORATION

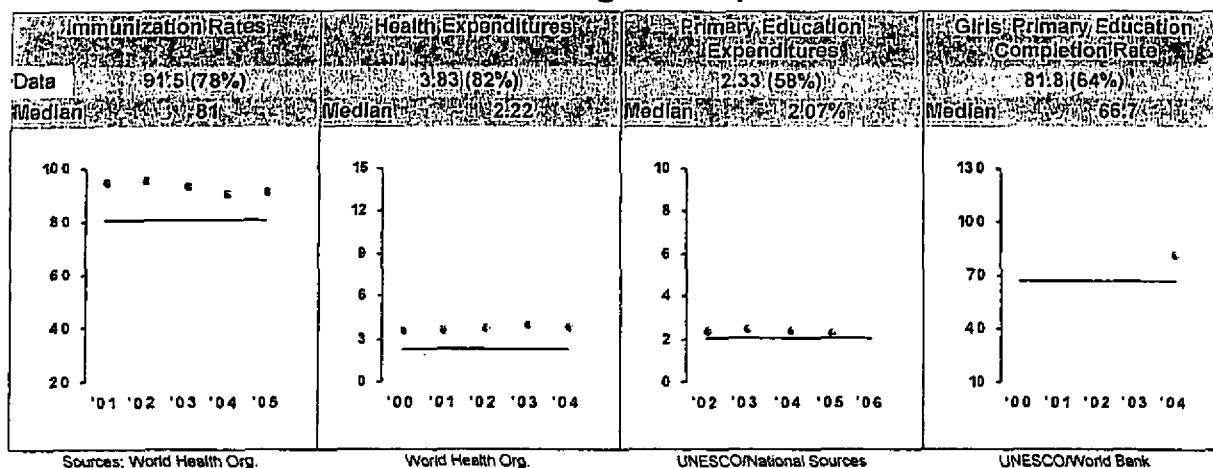
## Honduras FY07

Population: 7,048,327  
GNI/Cap: \$1,190 LIC

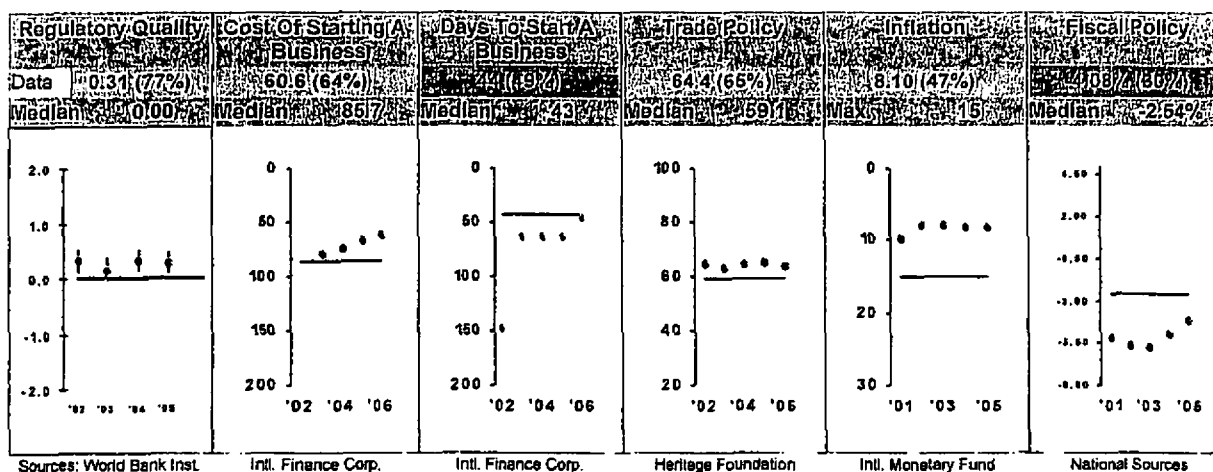
### Ruling Justly



### Investing in People



### Economic Freedom



How to Read this Scorecard: Each MCC Candidate Country receives a scorecard annually assessing performance in 3 policy categories: Ruling Justly, Investing in People, and Economic Freedom. For each indicator box (from top to bottom): the name of the indicator or policy, the country's data, or score, indicated by a green or red line representing a passing or failing score. Next to the score, is the country's percentile ranking in its respective Low Income or Lower Middle Income group (0% is worst; 50% is the median; 100% is best). Under the score/ranking, is the median score for the respective income group, above which countries have to score in order to pass the indicator. The white box represents a trend line of performance with each red dot assigned to a score on the vertical axis and the year on the horizontal axis. The black line running through the dots represents the current year's median. Data sources are below the box.

For more information regarding the Millennium Challenge Account Selection Process and these indicators, please consult MCC's website: [www.mcc.gov](http://www.mcc.gov)  
10/6/2006







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February 21, 2008  
LL File No. 2008-00643

*BS*

TO: The Honorable Ileana Ros-Lehtinen  
United States House of Representatives  
  
Attention: Sara Gamino  
  
FROM: Norma C. Gutiérrez *[Signature]*  
Senior Foreign Law Specialist  
  
SUBJECT: Laws of Honduras

---

This is in response to your February 13, 2008, request for information on the legal framework of anti-competitive and anti-commercial practices in Honduras, particularly from 2001 to 2004.

During that period, the applicable laws were:

**Constitution of the Republic of Honduras.** Originally published officially as Decreto No. 131 del 11 de Enero de 1982, Constitución de la República de Honduras, (LA GACETA, Jan. 20, 1982).

- Article 16, para. 2 states that international treaties entered into by Honduras with other states are part of the domestic law as soon as they enter into force.
- Article 18 states that in case of conflict between a treaty or convention and the law, the former shall prevail.
- Article 331 provides that the State guarantees and promotes freedom of various activities, including those connected with commerce and industry.
- Article 335 mandates that the State respect the treaties and agreements it signs.
- Articles 336 authorizes foreign investment and mandates its regulation.
- Article 339 prohibits monopolies, monopsonies, oligopolies, hoarding, and similar practices in the industry and commerce.

**Código de Comercio (Commercial Code),** Book II, Title II (Editorial Casablanca, Tegucigalpa, 2001).  
Note that no amendments applicable in the years 2001 to 2004 were located.



Hon. Ileana Ros-Lehtinen  
 February 21, 2008  
 Page 2

- Articles 422-429 are on unfair competition. Of special relevance is article 425, which includes a long list of types of conduct that constitute unfair competition.

Articles 422-424 and 425-III(a) of the Commercial Code are applicable only in situations that occurred before February 4, 2006, because these provisions were repealed as of that date by the Law for the Defense and Promotion of Competence, which is listed below.

**Ley de Propiedad Industrial (Industrial Property Law)**, Editorial OIM, Tegucigalpa, 2006; originally published officially in LA GACETA on January 29, 2000).

- Articles 170-173: Unfair competition. Please note that Article 173 regarding the application of fines as penalties was amended in 2006.

**Ley de Protección al Consumidor (Consumer Protection Law)**, LA GACETA, April 29, 1989 (available in the Global Legal Information Network (GLIN), <http://www.glin.gov>, as item no. 141100).

- Article 6 prohibits hoarding (*acaparamiento*);
- Article 29 (b) covers the Executive Branch's duty to prevent and combat several types of unfair commercial practices.
- Article 29 (c) charges the executive authority with the responsibility of exercising control of quality, quantity, weight, and measurement of the goods and services offered in the country.
- Article 32 (d) discusses the duty of the Secretariat of Economy and Commerce (hereafter, the Secretariat) to investigate any kind of illicit speculation or monopolization;
- Article 32 (e) provides the Secretariat with the responsibility to seize goods offered to the consumer whose quality and characteristics do not correspond to their price and also to seize those goods that are the objects of hoarding (*acaparamiento*) or unlawful speculation.
- Article 32 (h) charges the Secretariat with the responsibility of verifying compliance with the official standards of quality, quantity, measurement, price, or any other characteristic regarding the trade of goods and services.
- Article 32 (j) mandates the Secretariat to denounce before the appropriate tribunals actions that are to the detriment of consumers and that constitute crimes under the Penal Code
- Chapter VIII provides sanctions.

**Código Penal (Penal Code)**, Editorial Casablanca, Tegucigalpa, 2005.

- Title X, Crimes against the Economy: Articles 297 and 299 penalize acts against commerce.

**Decreto No. 226-2001, de 29 Diciembre 2001, Ley de Policía y de Convivencia Social (Decree 226-2001 of Dec. 29, 2001, Law on Police and Social Co-existence)**, LA GACETA, March 7, 2002 (available in GLIN, as item no. 89222).

- Article 1 specifies such general and specific duties of the police forces as law enforcement, including the police role in freedom of commerce and industry and its role of protecting the society from commercial abuses;
- Articles 64 and 65 cover preventing and combating monopolies, oligopolies, monopsonies, and other unfair commercial practices;
- Articles 128-141 provide the regimen of sanctions.



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**Código Civil (Civil Code)**, Edición Centenarioa, Editorial Oim, Tegucigalpa, 2006.

- Articles 1346, 1349, 1350, 1365, 2236 and 2237 refer to liability derived from torts involving acts or omissions causing damages through fault or negligence.

**Ley de Inversiones (Law on Investments)**, LA GACETA, June 20, 1992 (available in GLIN, as item no. 137929).

- Article 4, sect. 7 provides that the guarantees granted to foreign investments are to be supported by the bilateral and multilateral treaties to which Honduras is a party.
- Article 4, sect. 13 mandates that foreign investors resolve their disputes according to the treaties signed by Honduras.

**Treaty between Honduras and the United States on Encouragement and Reciprocal Protection of Investment**, dated July 1, 1995, approved by the Honduras Congress in Decree 207-98, August 11, 1998, and effective July 11, 2001, *available at* [http://tcc.export.gov/Trade\\_Agreements/All\\_Trade\\_Agreements/exp\\_005347.asp](http://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/exp_005347.asp).

- Article II (1, 3, a, b) provides the Treaty's major obligations with respect to treatment of investments, ensuring most-favored-nation (MFN) treatment; obligating Honduras to accord "fair and equitable treatment" and "full protection and security"; and imposing the obligation not to impair, through unreasonable and discriminatory means, the management, conduct, operation, and sale or other disposition of covered investments.
- Article II (4) requires the parties to provide effective means of asserting claims and enforcing rights with respect to covered investments.
- Article III (1) prohibits not only expropriation or nationalization of covered investments, but also measures that are tantamount to indirect expropriation or nationalization.
- Article IX sets forth several means by which disputes may be resolved.
- The Annex provides exceptions to national and MFN treatment, which may or may not apply to the case under consideration.

Please note that in light of Articles 16 and 18 of the Constitution that make international treaties ratified by Honduras part of the country's laws and place them over domestic law when there is a conflict between them and in light of the fact that Honduras ratified the Vienna Convention on the Law of Treaties, without reservations, the U.S.-Honduras Treaty on Encouragement and Reciprocal Protection of Investment became part of the binding laws of Honduras once it was ratified, and it prevails over all domestic legislation when there is a conflict between them.

**Reglamento Centroamericano sobre Prácticas Desleales de Comercio (Central American Regulation on Unfair Commercial Practices)**, LA GACETA, September 18, 1999 (available in GLIN as item no. 69076).

Title II deals extensively with procedures and measures in cases regarding unfair commercial practices.

**General Inter-American Convention for Trademark and Commercial Protection** (46 Stat. 2907). Honduras signed this Treaty on February 20, 1929, having acceded to it on October 19, 1935, and ratified it on November 29, 1935. The list of the contracting parties and the text of the Convention are *available at* the Web site of the Organization of American States, <http://www.oas.org/juridico/english/sigs/b-7.html>.



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- Article 1 states that the States parties to the Convention bind themselves to grant to the nationals of the other States parties and to domiciled foreigners who own a business in any of the States parties the same rights and remedies which their laws extend to their own nationals or domiciled persons with respect to trademarks, trade names, the repression of unfair competition, and false indications of geographical origin or source.

Chapter IV is on Repression of Unfair Competition (Articles 20-22):

- Article 20 mandates that every act or deed contrary to commercial good faith or to the normal and honorable development of industry or business activities must be considered as unfair competition and therefore is unjust and prohibited.
- Article 21 lists the acts that are declared to be acts of unfair competition.
- Article 22 mandates that the State parties which may not yet have promulgated legislation repressing the acts of unfair competition listed in Chapter IV must apply to such acts the penalties contained in their legislation on trademarks or in any other statutes and must grant relief by way of injunction against the continuance of said acts at the request of any party injured; those causing such injury must be answerable in damages to the injured party.

Chapter VI is on Remedies:

- Article 30 mandates that any act prohibited by the Convention will be repressed by the appropriate administrative or judicial authorities of the State where the offense occurred, by the legal methods and procedures of the State, either *sua sponte* or at the request of an interested party. The merchandise or their marks, which are the instrumentality of the acts of unfair competition, must either be seized or destroyed, or in some cases the offending markings may be obliterated.

**Paris Convention of March 20, 1883 for the Protection of Industrial Property, as revised**, (21 UST 1583). Entered into force for Honduras, on February 4, 1994. The list of the Contracting parties is available at [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=2](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=2). The Convention as amended on September 28, 1979, is available at [http://wipo.int/treaties/en/ip/paris/trtdocs\\_wo020.html](http://wipo.int/treaties/en/ip/paris/trtdocs_wo020.html).

- Article 10<sup>bis</sup> ¶ 1 ¶ 2 ¶ 3 [Unfair Competition], by this provision, the countries that are parties to the Convention bound themselves to assure to their nationals protection against unfair competition. In addition, the provision states that any act contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. Moreover, the provision lists three categories of acts that in particular must be prohibited.
- Article 10<sup>ter</sup> states that the countries that are parties to the Convention undertake to assure nationals of the other party countries appropriate legal remedies to effectively repress all the acts referred to in Articles 9, 10, and 10<sup>bis</sup> (this last one includes the acts of unfair competition).

**Vienna Convention on the Law of Treaties** (1155 U.N.T.S. 331). It was signed by Honduras on May 23, 1969, and ratified on September 20, 1979 (Multilateral Treaties Deposited with the Secretary-General, Status as at 31 December 2002, vol. II, Part I, Chapters XII to XXIX, and Part II, United Nations).

- Article 26, the *pacta sunt servanda* provision states that “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.”
- Article 27 states that “[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty ...”





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Ratifying the Convention binds Honduras to Articles 26 and 27.

**2007 National Trade Estimate Report on Foreign Trade Barriers (NTE), U.S. Trade Representative,**

The NTE report is issued yearly by the U.S. Trade Representative. It surveys fifty-eight nations, including Honduras, regarding significant foreign barriers affecting U.S. export of goods and services, foreign direct investment by U.S. persons, and protection of intellectual property rights. The 2007 survey on Honduras includes sub-heading such as "Other Barriers," and "Anti-Competitive Practices," which may be of interest to you; the last one covers anti-competitive, predatory pricing practices that occurred between 2003 and 2004. It is *available at* [http://www.ustr.gov/Document\\_Library/Reports\\_Publications/2007/2007\\_NTE\\_Report/Section\\_Index.html?ht.](http://www.ustr.gov/Document_Library/Reports_Publications/2007/2007_NTE_Report/Section_Index.html?ht.))

The NTE Reports issued in 2005 and 2006 also include the same information that may be of interest to you. They are *available at* [http://search.crownpeak.com/cpt\\_search/result\\_1?account=1003&q=2007+National+Trade+Estimate+Report+&submit.x=12&submit.y=14](http://search.crownpeak.com/cpt_search/result_1?account=1003&q=2007+National+Trade+Estimate+Report+&submit.x=12&submit.y=14).

**Legal Instruments Issued After 2004**

**Decreto 357-2005 de 16 de Diciembre, 2005 Ley para la Defensa y Promoción de la Competencia (Decree 357-2005 of Dec. 16. 2005, Law for the Defense and Promotion of Competition), LA GACETA, February 4, 2006 (available in GLIN as item no. 176503).**

According to Article 65, this statute came into force the day of its publication in LA GACETA, on February 4, 2006, and it may or may not apply to the case under consideration. Of special note are articles 5, 7, 11, and 12, prohibiting monopolies and other unfair commercial practices. Sanctions can be found in Title VI. Article 60 repeals Articles 422-424 and 425-III (a) of the Commercial Code. However, the provisions of this statute are applicable only to situations that occurred after February 4, 2006.

**The U.S.-Central America Free Trade Agreement (CAFTA-DR).**

This Treaty, to which Honduras is a party, has an investment chapter and other chapters that may be useful to you. The short deadline has precluded a review of this very extensive document, but it is available at the Web site of the U.S. Trade Representative, [http://www.ustr.gov/Trade\\_Agreements/Bilateral/CAFTA/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/CAFTA/Section_Index.html) (last visited July 13, 2007).

Finally, the legislation listed in this memorandum does not reflect the full spectrum of the applicable laws, but merely what was found in available sources within the constraints of the deadline. Furthermore, the provisions specifically pointed out in this memorandum are only those applicable to the specific subject matter of the legal framework of anti-competitive and anti-commercial practices in Honduras during the 2001-2004 period. There may or may not be many other provisions in each of the authorities cited and in other bodies of law that may be applicable to the full aspects and facts of the case you are considering.

If you need copies of any of the items listed above, please feel free to request them.



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If you have any questions concerning the above information, please call me at (202) 707-4314 or email me at [ngut@loc.gov](mailto:ngut@loc.gov). It has been my pleasure to assist you, and I hope that this information will be helpful.

The Law Library of Congress is the legal research arm of the U.S. Congress. We invite you to visit the Law Library website at <http://www.loc.gov/law>, which details all of our services and provides access to the Global Legal Information Network, a cooperative international database of official texts of laws, regulations, and other complementary legal sources of many foreign jurisdictions. Should you need further assistance with any other matter pertaining to foreign, comparative, or international law, please contact the Director of Legal Research by email at [law@loc.gov](mailto:law@loc.gov) or by fax at (202) 609-9264. Research requests may also be directed to the Law Library's Congress-only Hotline at 7-2700, which is staffed whenever either Chamber is in session.







## DEFINITIVE RELEASE

The undersigned, Secretary of the Sectional Court of Letters of Nacaome, department of Valle, **HEREBY CERTIFIES** that: OSCAR MAURICIO CERNA ARGUELLO has been granted a definitive release as a result of the dismissal of the charges brought against him for the crime of tax evasion to the detriment of the economy of the Republic of Honduras.

Therefore, the inmate, OSCAR MAURICIO CERNA ARGUELLO, regains the exercise of his full citizenship rights.

Nacaome, Valle, August 13, 2007.

[Signed and sealed]  
Nidia Rosibel Raudales, P.A.  
Supernumerary Judge of Letters

[Signed and sealed]  
Irma Lizzeth Guerra J.  
Acting Secretary





# CARTA DE LIBERTAD

D E F I N I T I V A .

El Infrascrito, Secretario del juzgado LETRAS  
SECCIONAL de NACAOME de este departamento VALLE.

HACE CONSTAR que : OSCAR MAURICIO CERNA ARGUELLO  
/DEFINITIVA/

Ha quedado en libertad, en virtud de haber SELE DECRETADO SOBRESEIMI-  
ENTO DEFINITIVO en la causa que se siguió por el delito de

DEFRAUDACION FISCAL, EN PERJUICIO DE LA ECONOMIA DEL ESTA-  
DO DE HONDURAS.

En consecuencia, el expresado reo OSCAR MAURICIO CERNA ARGUELLO.

Vuelve al ejercicio del ciudadano.

NACAOME, VALLE, 13 de AGOSTO

ASOG: NIDIA ROSIBEL RAUDALES  
JUEZ DE LETRAS SUPLENTERIA

del 20 87

SECRETARIA POR LEY.



**ILLEGAL PROSECUTION of CERN & CEMAR CONFISCATION**  
**By THE GOVERNMENT of HONDURAS (GOH)**  
**(A Human Rights Violation)**

**Parties:**

- Oscar Cerna, U.S. Citizen, President of Cemento America, S.A. (CEMAR)
- Honduras Attorney General's Office
- National Police Special Investigations Unit (NPSIU) (Para-Military Agency)
- Nacaome Town Court, State of Valle, Honduras
- Honduras Ministry of Finance (oversees Honduras IRS)

1. On June 3, 2001, CEMAR chartered a specialized freighter at a cost of \$400,000 for loading in Houston, Texas. The ship contained a 450-ton crane (not available in Honduras) to unload three heavy cement mills and 30 containers of equipment. The shipment was valued at \$13.02 million (\$3.5 million of machinery originally destined for Guatemala and \$9.52 million of machinery and equipment to be used at the CEMAR plant in Honduras). The full shipment was insured by AIG at \$30 million.
2. On July 9, 2001, the ship arrived at the Port of Henecan in southern Honduras, seven miles from the CEMAR plant in the town of San Lorenzo. The equipment was unloaded and processed by local Customs authorities as a temporary import, with re-exportation due in six months. CEMAR was required to post two corporate promissory notes to cover 1% of the import tax value of the machinery and equipment (\$141,700) prior to the release of the equipment from Customs. All equipment was transported to CEMAR except for the three cement mills, for which specialized trucks were required to be brought in from the U.S. on an emergency basis (due to failure by the Honduras transport company to provide this specialized equipment.)
3. On July 12, 2001, at the request of the Port Authority, CEMAR posted an additional \$200,000 bond to guarantee prompt withdrawal of the three cement mills from the port. In August, the mills were removed from the port by the specialized trucks brought in from the Houston, Texas (Brown and Root, a subsidiary of Halliburton) and transferred to the CEMAR facility. This operation cost an additional \$210,000.
4. On November 15, 2001, officials from the National Police Special Investigations Unit (NPSIU, a Para-military agency) arrived unannounced at the CEMAR plant. They confiscated and put under guard all machinery and equipment at the plant. During this process, the NPSIU officials stated that the seized machinery and equipment had been illegally imported into the country, despite the temporary import license issued by Customs/IRS to CEMAR on July 9, 2001. At no time did NPSIU officials present a court order authorizing the confiscation, or any warrant from Customs/IRS authorities. CEMAR never received any official communication from the Honduras IRS or Customs concerning these events prior to the confiscation of the equipment.



5. On December 6, 2001, the chief prosecutor in the city of Choluteca filed criminal charges ("Tax Evasion to the Detriment of the Economy of the Republic of Honduras") against Cerna, and others, on the basis that CEMAR had illegally imported the machinery. However, the prosecutor filing these charges had done so in bad faith and without a formal request from the Honduras IRS or authorization from the Attorney General's office, as required by Honduras law. As a result, due to these false charges, the local town Court of Nacaome issued a highly publicized arrest warrant for Cerna and ordered the confiscation of CEMAR's machinery and equipment. The judge never verified the prosecutor's authority in making the accusations against Cerna.
6. Senior officials of the Honduras IRS, as well as the Attorney General, were at this time closely associated with the partially-military owned cement company (INCEHSA) and the other cement company (CENOSA) that comprised the local Cement Cartel. In fact, the Attorney General later resigned from office to run for the Honduran Congress in affiliation with a questionable local politician that is a senior member of the cement cartel. The Attorney General was later charged with corruption and abuse of power benefiting the cement cartel with millions of dollars.
7. On January 4, 2002, CEMAR's local counsel filed a petition with the Nacaome Court, stating that there were no grounds for the actions against Cerna and CEMAR. Counsel cited that CEMAR promissory notes were legally accepted by Customs/IRS, were still valid, and had sufficient guarantee (\$13 million) to cover the 1% of the import tax value (\$141,700). He questioned the prosecutor's authority and actions in filing criminal charges against Cerna and the confiscation of the CEMAR assets.
8. On January 7, 2002, Paul Trivelli, Deputy Chief of Mission at the U.S. Embassy in Tegucigalpa (and later U.S. Ambassador to Nicaragua), appeared before the new Attorney General to contest the allegations against Cerna. The Attorney General contacted the chief local prosecutor in Choluteca questioning the charges filed against Cerna without prior consent from his office. The Attorney General also cited Article 187 of the Tax Code, under which the Attorney General may issue tax warrants only under the direction of the Honduras IRS and with permission from the Ministry of Finance; and indicated the absence of any such requests from the Honduras IRS as to the Cerna charges, constituting a violation of Honduras laws.
9. On February 14, 2002, under the new President Maduro Administration, CEMAR was granted a resolution extending the temporary importation of CEMAR's machinery and equipment for an additional six months. This Honduras IRS resolution confirmed the legality of CEMAR's temporary importation, supported by newly issued bank guaranteed notes for the re-exportation equipment and payment of all applicable duties for the equipment that was being installed at the CEMAR plant.
10. On March 26, 2002, CEMAR, in connection with the above resolution presented the Honduras IRS with a \$38,200 bond to guarantee the re-exportation of a portion of the machinery and equipment (valued at \$3.5 million, and destined for Guatemala).



11. On April 1 2002, CEMAR under the February 14 resolution paid \$97,700 to cover the full import tax value of the machinery and equipment, to be used at the CEMAR plant in Honduras (valued at \$9.52 million).
12. On April 5, 2002, the Nacaome local town court issued a resolution decreeing the definitive dismissal of the case and absolving Cerna from any criminal responsibility.

In his opinion, the judge in Nacaome cited the following grounds for the dismissal:

- a. The Ministry of Finance, through the Honduras IRS, did not authorize the Attorney General's Office to file a case against CEMAR or Cerna.
- b. The Attorney General's Office did not follow required administrative proceedings against CEMAR to secure payment of the import duties.
- c. Prior to the resolution, CEMAR had paid the import duties on the machinery.
- d. No crime was ever committed and therefore there was no criminal to prosecute.
- e. The accusation was groundless and therefore inadmissible in court.

As part of the resolution, the judge ordered that the confiscated machinery and equipment be immediately released back to the control of CEMAR. The arrest warrant against Cerna was dissolved and all of Cerna's legal rights were reinstated.

## CONCLUSION

- The illegal prosecution of Oscar Cerna (including the initial false accusations, the manipulation of charges, the arrest warrant issued against him, and the confiscation of CEMAR's machinery and equipment), apart from being egregious violations of his human rights, were an exhibition of flagrant corruption at the highest levels of the Honduras government.
- The Honduras government actions caused a serious and costly delay in the construction of the CEMAR plant, and irreparable damage to Cerna's image in the country. But for the timely assistance of the U.S. Embassy, the CEMAR plant would never have been completed, CEMAR's assets would have remained permanently confiscated, and Cerna would have been required to defend himself against the false and malicious criminal charges.
- These illegal and immoral government actions benefited the part-military cement company (INCEHSA) and the other member of the cement cartel.
- The Honduras government's direct and illegal intervention, along with the intimidation and harassment of Cerna by the Honduras IRS and the Honduras Intellectual Property Agency, and the illegal subsidies (reducing taxes and loans) to the part-military cement company, in their totality constituted an expropriation of CEMAR.





[Official letterhead]

**MINISTRY OF SECURITY**  
General Directorate for Special Investigation Services

**RECORD OF SEIZURE AND DEPOSIT**

The undersigned Regional Coordinator of the General Directorate for Special Investigation Services in Nacaome, Valle, hereby seizes the machinery for the installation of a cement plant known as CEMENTO AMERICA S.A. de CV (CEMAR), as declared in the Single Customs Declaration Forms Nos. 01627 and 01628 dated 07-09-2001. This machinery entered [the country] through the El HENECAN Customs, San Lorenzo Valle. Because of an irregular and illegal importation process, you are hereby informed that you are solely responsible for the withdrawal, transportation or any other movement of the machinery and equipment included in the previously described Single Customs Declaration Forms (DUA).

Note: This preemptive measure is taken based under the Police Law, Decree 156-98; article 35, paragraph 1 of the Customs Law; and articles 72, 73 and 74 letters B and C of the Customs Simplification Law, Decrees 212-87 and 197-93.

No additional details.

San Lorenzo, Valle, November 15, 2001.

[Signed and sealed]  
Sub-Inspector Nelson Murillo Perez  
Regional Coordinator, DGSEI, Nacaome, Valle







[Official letterhead]

**OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC**  
REPUBLIC OF HONDURAS, C.A.

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LETTER No. 03/2002-PG

Tegucigalpa, M.D.C.  
January 07, 2002

[Mr.] NELVER JOSE NÚÑEZ ORDÓÑEZ  
Head Agent  
Office of the Attorney General of the Republic  
Choluteca, Choluteca

[Mr. Núñez]:

As I expressed to you during our telephone conversation, as well as through the documentation I faxed to you earlier today, Mr. Paul Trivelli of the American Embassy in Honduras has submitted a complaint to this Office regarding a criminal accusation brought against an American firm. This accusation was presented in spite of it [the American firm] having a temporary import permit and signing a promissory note in favor of [the] Customs [Administration.]

As you can observe in the referred documentation, the information was given to Mr. Trivelli by Mr. Leonidas Rosa Bautista, CEMAR's Legal Counsel.

Since you made the decision to present this accusation without prior consultation with our Head Office, I must remind you that according to article 187 of the Tax Code, the Office of the Attorney General of the Republic must always act at the request of the General Directorate for Internal Revenue (DEI in Spanish) through its highest official. Up until now, we do not know if this was the case, otherwise we would be acting against the law. In this regard, I ask you to send to my office, as soon as possible, a copy of the accusation and its supporting documentation, so that we may evaluate whether we should proceed with this accusation.

Sincerely,

[Signed and sealed]  
Carlos Humberto Arita Mejia, P.A.  
Attorney General

Cc: Mr. Paul Trivelli, American Embassy, Tegucigalpa, Honduras  
Cc: File



# GOH Illegal Prosecution of Mr. Cerna

(False Charges against CEMAR and Mr. Cerna)  
Human Rights Violation 2001-2002

Naturally, much of the specialized heavy equipment needed to establish the state-of-the-art CEMAR production facilities had to be imported. A substantial portion of that equipment (valued at over \$13 million) was landed at the port of Henecan, in southern Honduras, in July 2001. Initially, it was cleared for temporary importation, with the required customs bonds duly deposited to secure re-export within six months.

Four months later – in other words, during the time when there could be no argument about whether the equipment was properly in the country – the National Police raided the CEMAR facility and seized the equipment. While the importing entity was CEMAR and not Mr. Cerna individually, Mr. Cerna was personally charged by the local prosecutor with tax evasion. The local judge not only admitted the charges, but reaffirmed the seizure. In a grave violation of human rights, he issued a warrant for Mr. Cerna's arrest.

The charges were entirely without basis. After the United States Embassy intervened at a very senior level, it emerged that there was not even a legal fig-leaf to cover the embarrassing illegality of these actions. Under Honduras law, the National Police has no authority to seize anything without a prior court order. And only the national prosecutor may initiate indictments for tax fraud, and he may do so only on request from the national headquarters of the tax authorities. Neither happened here. It appears that the regional police inspector and the local prosecuting agent took it on themselves to seize the CEMAR machinery and to file charges against the U.S. national whose company had imported it.

In February 2002, the national tax agency confirmed the legality of CEMAR'S import activities, and extended the temporary importation for six months. CEMAR posted an additional re-exportation bond, and before the expiration of the period, paid all applicable duties and permanently imported the equipment into Honduras. In April, the court confirmed that the charges had been substantively baseless and procedurally improper. Nevertheless, the interference with CEMAR'S start-up, as well as the personal attacks on Mr. Cerna, were both costly and intimidating.

***\*Excerpt from Greenberg and Traurig, Legal Analysis, page No. 6 and 7***





## GOH Illegal Prosecution of Mr. Cerna and Confiscation of CEMAR Assets

Human Rights Violation 2001-2002  
(Prosecution of CEMAR and Mr. Cerna)

The abuse of CEMAR and Mr. Cerna by police officials – including the false accusations of customs fraud – represented actions procedurally and substantively unlawful in Honduras, as the courts ultimately found. The prosecution was ultimately dismissed as *ultra vires* the Government official who brought it (undoubtedly in an excess of zeal support of what he knew was the Government program: to force CEMAR from the market by any means necessary).

The involvement in the Government in these measures, incidentally, justifies the claim that they constituted violations of Mr. Cerna's human rights, as well as of his rights under the Treaty and Honduran domestic law. Honduras is a signatory to all of the principal instruments guaranteeing basic human rights, including the International Covenant on Civil and Political Rights, and the Pact of San Jose (the Inter-American human rights treaty). All of these commit states parties to abandon the use of the criminal justice system for political ends, and vouchsafe the rights of those accused by the system to fair treatment, before, during, and after the charges are brought against them. Only states are parties to these agreements, and only states can violate their provisions, as the Government of Honduras did here.

Once again, it can hardly be argued that the Government was a stranger to a plot of its won devising. The fingerprint of Government agents are all over the malicious prosecution of Mr. Cerna and CEMAR.

**\* Excerpt from Greenberg and Traurig, *Legal Analysis*, page No. 9**



## **Confiscation of Cemar Assets w/o Due Process**

(False Charges against CEMAR and Mr. Cerna)  
Human Rights Violation 2001-2002

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***\*Excerpt from Greenberg and Taurig, Legal Analysis, page No. 6 and 7***



## GOH Illegal Prosecution of Mr. Cerna and Confiscation of CEMAR Assets

Human Rights Violation 2001-2002  
(Prosecution of CEMAR and Mr. Cerna)

The abuse of CEMAR and Mr. Cerna by police officials – including the false accusations of customs fraud – represented actions procedurally and substantively unlawful in Honduras, as the courts ultimately found. The prosecution was ultimately dismissed as *ultra vires* the Government official who brought it (undoubtedly in an excess of zeal support of what he knew was the Government program: to force CEMAR from the market by any means necessary).

The involvement in the Government in these measures, incidentally, justifies the claim that they constituted violations of Mr. Cerna's human rights, as well as of his rights under the Treaty and Honduran domestic law. Honduras is a signatory to all of the principal instruments guaranteeing basic human rights, including the International Covenant on Civil and Political Rights, and the Pact of San Jose (the Inter-American human rights treaty). All of these commit states parties to abandon the use of the criminal justice system for political ends, and vouchsafe the rights of those accused by the system to fair treatment, before, during, and after the charges are brought against them. Only states are parties to these agreements, and only states can violate their provisions, as the Government of Honduras did here.

Once again, it can hardly be argued that the Government was a stranger to a plot of its own devising. The fingerprint of Government agents are all over the malicious prosecution of Mr. Cerna and CEMAR.

***\* Excerpt from Greenberg and Traurig, Legal Analysis, page No. 9***



## ENGLISH TRANSLATION

# **COMPLAINT FOR HUMAN RIGHTS VIOLATIONS AND REQUEST FOR PROTECTION<sup>i</sup>**

## **HONORABLE NATIONAL COMMISSIONER ON HUMAN RIGHTS DR. RAMON CUSTODIO LOPEZ**

I. **OSCAR MAURICIO CERNA**, of legal age, businessman, married, United States citizen and in transit in this city, with all respect, I am hereby presenting this Complaint For Human Rights Violations committed by the Government of Honduras through acts and omissions of officials, employees, and agents of the State, during the administration of President Ricardo Maduro (2002-2006) and perpetrated especially by the partially state-owned cement co. Lafarge-INCEHSA (+/- 50% by the Armed Forces of Honduras), a member of the de facto cement oligopoly, for which I declare the following facts and legal considerations:

### **FACTS**

#### **FIRST: DEPRIVATION OF PROPERTY RIGHTS AND RIGHT TO FREELY ENGAGE IN INDUSTRY, COMMERCE, BUSINESS AND CONTRACTS**

The undersigned organized, constructed and developed in the South of Honduras a cement plant under the company Cemento America, S.A. de C.V. (CEMAR), legally constituted under the laws of the Republic of Honduras, in partnership with a company based in Japan, and with an investment in excess of 600 million Lempiras [+/- \$30 M]. The construction phase lasted almost four years, in which thousands of jobs were created, and millions of lempiras contributed to the Honduras treasury. The strategically located plant had as its objective meeting a share of the demand within Honduras, as well as within El Salvador and Nicaragua, with its high-quality product "Cemento UNO."

#### **I. Intimidation and Persecution by Taxing Authorities, and by Other Government Officials and Members of the Cement Oligopoly and Private Parties**

(a) On December 3, 2003, within less than 60 days after CEMAR commenced operations, the Honduras IRS notified CEMAR that it would be conducting a tax audit. It is very important to emphasize that this kind of audit is normally sought between the second and third years of operations, and is never conducted as to pre-operational or first year business activities, which indicates that it was not motivated by any good faith purpose regarding the government's fiscal interests, but rather for the sole purpose of initiating a process of harassment against the new cement company.

(b) On May 17, 2004, the announced audit was commenced, with Messrs. Bernabe Mejia as Auditor and Benjamin Cardona as Supervisor.





(c) In June of 2004, CEMAR was obliged to close its plant, finding itself unable to continue defending itself against the government actions against it, aimed at its destruction. It must be mentioned that during this time, my personal safety was also seriously threatened....

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## PETITION

**To the Honorable National Commissioner On Human Rights, we petition that you:**

Accept the within Complaint and acknowledge as delivered the relevant documents sent to the office of the National Commission, consisting of:

- a) Report of an investigation of the cement industry in 2004 by the Secretary of Industry and Commerce together with the Attorney General for Consumers within the Public Ministry (PM), regarding the predatory prices by which CEMAR was victimized by Lafarge-INCEHSA.
- b) Report of the Office of the Attorney General (OAG) in 2004 regarding the illegal practices engaged in by the cement oligopoly (Lafarge-INCEHSA and CENOSA) towards the bankrupting and elimination of CEMAR, which also adversely affected the consumer and the general economy of the country.
- c) Criminal Complaint against Acts of Corruption filed with the Special Prosecutor Against Corruption by Representative Doris Gutierrez, on February 16, 2009, regarding the conspiracy among officials of the Honduras government during the Maduro Administration, and the quasi-state company Lafarge-INCEHSA, the auditing firm Palao William and high ranking military officials in IMP.
- d) Chronology of the conspiracy among the Honduras IRS, Lafarge-INCEHSA, the auditing firm Palao William and officials of the Maduro Administration, in particular, the Secretary of Finance, all regarding the fiscal terrorism committed against CEMAR with consequences also to the consumer.
- e) Letters from United States Congressmen sent to President Jose Manuel Zelaya, regarding the expropriation of CEMAR and the violations of Mr. Cerna's human rights.
- f) Chronology of the illegal accusations against Mr. Cerna and confiscation of the assets of CEMAR and other arbitrary measures.
- g) Chronology and documentation of the attempts to confiscate the trade mark "America", property of CEMAR, by the company Cementos del Norte (CENOSA), at the time presided over by Attorney Yani Rosenthal, and in collusion with the authorities of the Secretary of Industry and Commerce and the Registry of Marks and Patents.



h) Recording in compact disk form, with transcription, that provides evidence of the scheme to illicitly bankrupt CEMAR, also to the detriment of the State [of Honduras] and the consumer, which recording contains a conversation between an executive of Lafarge-INCEHSA and a cement distributor. The conversation is between Dario Mencia, Sales Manager of Lafarge-INCEHSA, and Julio Lopez, owner of El Campeon, the cement distributor. The threats of the Lafarge-INCEHSA executive clearly include a premeditated cutting of cement prices with the goal of eliminating CEMAR, thereby promoting and executing this malicious action.

i) Legal analysis of the internacional law firm Greenburg Traurig regarding the direct involvement of the Honduras government in the elimination of CEMAR.

j) Attached are pages referencing Lafarge Group and demonstrating its repeated monopolistic practices, price fixing and restricting competition in more than a dozen countries, for which it has been subjected to multi-million dollar fines and sanctions.

If in fact these abuses occurred more than one year ago, I request the admission of this Complaint, not only due to the gravity of the case and the injustices committed, but also because the effects of the cited violations remain very much present and real to this day, against the interests of consumers, unemployed workers and against my own rights granted under the Constitution of Honduras and international treaties; in addition to my being required to establish my residence outside of Honduras.

Accept then this declaration, conduct the necessary investigations, extend the protection of the Human Rights Commissioner to the undersigned as necessary for my personal safety; continue advancing the investigation and finally resolve the same, declaring the following - to have been violated or damaged the rights of property, and freedom of industry, commerce, business, and contracting, accruing to me; and also to have been violated the right to work of those who were my employees, and the right to life and homestead of all the Honduran people - all by the officials, employees, and agents of the State involved in these human right violations - and ordering your recommendations and guidance accordingly.

Tegucigalpa, M.D.C., May 13, 2009

**Oscar M. Cerna**

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<sup>i</sup> Full Report upon Request



## **QUEJA DENUNCIANDO LA COMISIÓN DE VIOLACIONES A DERECHOS HUMANOS. SE PIDE PROTECCIÓN.**

**SEÑOR COMISIONADO NACIONAL DE LOS DERECHOS  
HUMANOS,  
DR. RAMÓN CUSTODIO LÓPEZ.**

Yo, **OSCAR MAURICIO CERNA**, mayor de edad, empresario, casado, ciudadano de los Estados Unidos de América y en tránsito por esta ciudad, con el mayor de los respetos, comparezco presentando queja por las violaciones de derechos humanos realizadas por el Estado de Honduras a través de acciones y omisiones de funcionarios, empleados y agentes del Estado, durante la administración del Presidente Ricardo Maduro (2002-2006) y especialmente perpetradas por la empresa semi-estatal Lafarge-INCEHSA, (con participación casi del 50% de las Fuerzas Armadas de Honduras), miembro del nefasto oligopolio cementero, por lo cual me fundamento en los siguientes hechos y consideraciones de derecho:

### **HECHOS**

#### **PRIMERO: AFECTACIÓN AL DERECHO DE PROPIEDAD ASÍ COMO DE LAS LIBERTADES DE INDUSTRIA, COMERCIO, EMPRESA Y CONTRATACIÓN.**

El suscrito organizó, construyó y desarrolló en el Sur de Honduras, una planta cementera propiedad de Cemento América, S.A. de C.V., (**CEMAR**), legalmente constituida de acuerdo a las leyes de la República de Honduras, en sociedad con una empresa de origen japonés, y con una inversión superior a los Seiscientos Millones de Lempiras. La fase de construcción tomó casi cuatro años, creándose miles puestos de trabajo, y contribuyendo millonarias sumas fisco hondureño. La planta estratégicamente situada, tenía como objeto abastecer parcialmente la demanda de Honduras, así como la de El Salvador y Nicaragua, con su producto de alta calidad "Cemento UNO".

#### **I. INTIMIDACION Y PERSECUCION DE LAS AUTORIDADES TRIBUTARIAS CON OTROS FUNCIONARIOS DEL ESTADO, MIEMBROS DEL OLIGOPOLIO CEMENTO Y PARTICULARES.**

- a) El 3 de diciembre del 2003, a menos de sesenta días de haber iniciado operaciones, la Dirección Ejecutiva de Ingresos (DEI), notificó a **CEMAR**, que iniciaría un proceso de auditoria tributaria. Es muy importante subrayar que este tipo de auditorias normalmente se practican entre el segundo y



tercer año de operaciones y nunca se realizan dentro de las actividades preoperativas o del primer año, por lo que no se advirtió ninguna sana intención por los intereses fiscales del Estado sino de iniciar un proceso de hostigamiento contra la nueva cementera.

- b) El 17 de mayo de 2004, dio inicio la auditoria anunciada, designándose para tal efecto a los Sres. Bernabé Mejía como Auditor y Benjamín Cardona como Supervisor.
- c) En junio de 2004, **CEMAR** se ve obligada a cerrar su planta, al verse incapacitada para continuar defendiéndose de las acciones gubernamentales en su contra para destruirla. Cabe mencionar que durante todo este período, mi integridad personal se vio seriamente amenazada.
- d) En julio 12 del 2004, encontrándose en una situación de extrema intimidación, coacción y hostigamiento, me vi obligado a firmar un convenio para traspasar en ese momento mi participación accionaria en **CEMAR** a favor de Lafarge-INCEHSA, co-propiedad del Estado hondureño. Entre otras obligaciones, el acuerdo establecía la realización de un "*Due Diligence*" o auditoria sobre los aspectos financieros, legales y tributarios a fin de determinar una valoración de **CEMAR**. Lafarge-INCEHSA impone, muy a su conveniencia, que sus auditores externos, Palao William (Representante en Honduras de la firma internacional Deloitte & Touche), realicen un análisis fiscal como parte del *Due Diligence*, asignando a los señores Rita María Silva y Rigoberto Montes, quienes se convirtieron en los responsables directos de gran parte de los cargos tributarios maliciosamente y fraudulentamente inventados contra **CEMAR**.

Los señores Silva y Montes, fueron funcionarios de la Dirección General de Tributación (DGT, ahora DEI), en el momento que era dirigida por el señor William Chong Wong, en la administración del Presidente Rafael Leonardo Callejas (1990-1994). Posteriormente, ambos pasaron a ser miembros de la firma auditora Palao William, siendo sus principales socios y ejecutivos los señores William Chong Wong y David Palao. A partir de esa fecha, ambos han desempeñado importantes cargos ejecutivos de confianza.

Durante todo ese tiempo, yo desconocía la existencia del conflicto de intereses existente entre la firma auditora y altos funcionarios del Gobierno, así como de la compleja trama que en aquel entonces se urdía y se ejecutaba en contra de **CEMAR**.

- e) El 20 de julio, la DEI emitió las resoluciones y los documentos denominados "*Hojas de Explicación de Ajustes*", estableciendo cargos por 1.09 Millones de Lempiras, asimismo, determinó a favor de **CEMAR** un crédito fiscal por 3.2 Millones de Lempiras en concepto de pago de Impuesto Sobre Ventas, por lo que quedaba un saldo a favor de **CEMAR** superior a los Dos Millones





de Lempiras. Con lo anterior, la DEI dio por terminada la fiscalización tributaria hasta diciembre del 2003.

Luego de la discusión de ajustes entre los auditores de la DEI y la empresa, **CEMAR** acepta los resultados mencionados, los que quedaron debidamente detallados en las "hojas de Explicación de Ajustes", firmadas y selladas por los Señores Walter Guevara, jefe de auditoría, Bernabé Mejía, Auditor y Benjamín Cardona, Supervisor. Dichos auditores informaron a **CEMAR** que las resoluciones oficiales serían entregadas en los días siguientes, una vez que fueran firmadas por el Director Mario Duarte para proceder a la cancelación de los ajustes en tiempo y forma, como señala la Ley.

Sin embargo, por "órdenes superiores" las resoluciones fueron maliciosamente retenidas para favorecer a la empresa semiestatal Lafarge-INCEHSA en su afán de intimidar y coaccionar aun más, a los inversionistas de **CEMAR** y así poder sacar mayor ventaja en su propósito de adueñarse de la empresa y eliminar la competencia.

- f) El 6 de agosto del 2004, los auditores externos de Lafarge-INCEHSA, (Palao Williams) emiten un fraudulento informe de revisión fiscal como parte del Due Diligence, mencionada en el literal "d" de esta Queja, señalando la existencia de ajustes en una suma en dólares americanos equivalente aproximadamente a los 95.4 Millones de lempiras, agregándose que de acuerdo a los comentarios del Gerente General de Lafarge-INCEHSA y representantes de su firma auditora, que lo más delicado de los reparos eran sus repercusiones penales, y que dicho concepto no era negociable debido al estricto "catolicismo del Grupo Lafarge". Dicho informe fue realizado maliciosamente, ya que la firma auditora tenía conocimiento que el pasivo tributario de **CEMAR** era de 1.09 Millones de Lempiras, y que tenía un crédito por más de Dos Millones de Lempiras.

Es oportuno recordar que, tal como lo mencionó en su oportunidad el Jefe de Auditoría de la DEI, Sr. Walter Guevara, éstas "órdenes superiores" son las mismas que intervinieron directamente para "arreglar" el escandaloso caso de la reducción ilegal de los impuestos de Lafarge-INCEHSA, para beneficiar al Instituto de Previsión Militar (IPM), quien era supuestamente el responsable directo del pasivo fiscal.

- g) Los hechos y circunstancias anteriores, producen indignación en los ejecutivos de **CEMAR** no solo por la magnitud de los ajustes, sino como por las serias implicaciones que involucraban sus observaciones en materia tributaria y que sus adversarios, o sea el oligopolio cementero con su influencia, fácilmente podrían convertirlas en años de cárcel, utilizando para ello un disfraz de legalidad. Recuérdese que ya en ese entonces el Sr. Chong Wong fungía interinamente como Ministro de Finanzas.



- i) Con dicho informe en su poder, Lafarge-INCEHSA incrementa sus actos de intimidación y coacción en mi contra, y me amenazan con acusarme por incumplimiento del convenio de traspaso de las acciones previamente firmado y de ejecutar actos de evasión fiscal contra el Estado de Honduras. **CEMAR** identifica una gravísima amenaza y centra su atención en rechazar totalmente el informe de auditoria por contener información manipulada y alejada de la realidad.
- j) En agosto 11 del 2004, el conocido abogado hondureño, Jorge W. Fonseca, especialista en Derecho Tributario, con amplia experiencia acumulada como ex Jefe de Reclamos y Asesor de la DEI, entrega a **CEMAR** un dictamen en el que desvirtúa en un 98% los ajustes presentados por los auditores externos de la empresa semiestatal Lafarge-INCEHSA, con relación al pasivo tributario de **CEMAR**. En su dictamen, el especialista, quien actualmente es también catedrático universitario en la materia, demostró que la aplicación de los ajustes hechos por dichos auditores externos a las operaciones de la empresa eran ***“improcedentes e inaceptables por haber sido determinados bajo un criterio que denota una interpretación errónea de las leyes fiscales que han invocado en el informe que nos fue proporcionado”***. Este dictamen fue refrendado por otros reconocidos profesionales hondureños en la materia.

La dolosa retención y ocultamiento de las autoridades tributarias del Gobierno de Honduras de las resoluciones oficiales de la auditoria practicada a **CEMAR**, mediante la cual, semanas atrás, se había determinado la existencia de un pasivo tributario de apenas 1.09 Millones de Lempiras, cubierto en exceso por un crédito a favor de **CEMAR** de más de Dos Millones; así como la maliciosa determinación de ajustes hecha por los auditores de Lafarge- INCEHSA, de un monto ridículo y exagerado por el mismo concepto, (por más de 95.4 Millones de Lempiras, **suma que era 86 veces mayor a los 1.09 millones de lempiras y aceptados por la DEI**), pusieron en evidencia la confabulación de las partes interesadas para causarle mayores daños y perjuicios a los accionistas de **CEMAR**. Además, esta acción tuvo un efecto disuasivo y más intimidatorio en los socios de la empresa, de los cuales los accionistas japoneses optaron por abandonar el país como medida de protección, dejando a su suerte a los socios estadounidenses, liderados por el suscrito denunciante.

Cabe señalar que, de haber tenido **CEMAR** las resoluciones oficiales de la DEI al momento que los auditores externos de Lafarge-INCEHSA presentaron sus ajustes inventados y tendenciosos, éstos hubiesen sido desvirtuados casi en su totalidad. Asimismo, hubiese quedado en evidencia la trampa urdida por Lafarge-INCEHSA en contubernio con los jefes militares del IPM, Palao William y altos funcionarios del Gobierno del Presidente Ricardo Maduro involucrados, que tenía como propósito que Lafarge-INCEHSA se adueñaran de **CEMAR** a un precio ridículo.



- k) En agosto 20 del 2004, la empresa semiestatal Lafarge-INCEHSA, poniendo como excusa el inexistente pasivo tributario por más de 95 millones de lempiras, informa a **CEMAR** que ya no tiene interés alguno en adquirir la empresa, y que por lo tanto rescinde el convenio. Seguidamente, Lafarge-INCEHSA, utilizando la misma coacción y la complicidad gubernamental como principales armas de presión, impone como única alternativa que **CEMAR** le traspase sus activos a precios de mayor conveniencia para Lafarge-INCEHSA.

Estas circunstancias llevaron a convertir a la Secretaria de Finanzas por medio de la DEI, en el factor clave y decisivo como una balanza cargada que podía inclinarse en contra de **CEMAR**. Por consiguiente, es de conclusión obligada señalar que el Gobierno de Honduras, por medio de los funcionarios ya mencionados, fue el principal responsable de la debacle de la empresa y que el futuro de ésta estuvo en sus manos en ese preciso momento.

Todos estos ataques a **CEMAR** impactaron en todas sus estructuras, afectando considerablemente el bienestar de los empleados y trabajadores de la propia empresa, así como los intereses de sus proveedores, clientes, entes financieros y las comunidades aledañas, que se beneficiaban del impacto de desarrollo local que la empresa significaba en una de las regiones más pobres del país. Estas circunstancias también pusieron en evidencia la acción criminal del Estado a través de sus funcionarios y empleados que debió, en el peor de los casos, proteger los intereses de los trabajadores, sus familias y la comunidad.

Días después, Lafarge-INCEHSA en sustitución del convenio original, impone términos y condiciones para adquirir selectivamente los activos de **CEMAR**, lo que representa mayores pérdidas para la empresa.

- l) El 27 de Octubre del 2004, ante esta situación extrema de intimidación, coacción y hostigamiento y temiendo ser encausado por el Estado (tal como ya había sucedido en 2001-2002), el suscrito denunciante, formaliza el traspaso de los activos de **CEMAR** a Cementos del Sur (CESUR), empresa constituida en partes iguales por la semiestatal Lafarge-INCEHSA y una "empresa de maletín" fundada con el irrisorio capital de 10 mil dólares en la República de Panamá, conocido paraíso fiscal. Llama la atención que en la industria del cemento, no es costumbre entre empresas transnacionales utilizar la figura de "*empresas de maletín*" que pudieran encubrir operaciones financieras, tributarias, la identidad de sus verdaderos socios, así como el lavado de dinero.

En éstas condiciones inicuas se consumó el despojo de los activos de **CEMAR**, la cual, no obstante las lesiones económicas que le infiriera la empresa Lafarge-INCEHSA, siempre cumplió con todos los compromisos contraídos con sus acreedores, incluyendo el Gobierno de Honduras.



- m) El 29 de octubre del 2004, exactamente 48 horas después que **CEMAR** fuese obligado a traspasar sus activos a la subsidiaria de Lafarge-INCEHSA, las resoluciones que por "órdenes superiores" fueron maliciosamente retenidas para favorecer a Lafarge-INCEHSA, por las mismas "órdenes superiores" dichas resoluciones fueron entregadas a **CEMAR**, o sea después de casi 100 días de concluida la auditoria tributaria.

Dichas resoluciones confirmaron la realidad que el pasivo tributario de **CEMAR** apenas sumaba 1.09 Millones de Lempiras y no los más de 95 Millones de Lempiras, como dolosamente los había determinado la firma auditora de Lafarge-INCEHSA. La retención intencional de las resoluciones que confirmaban los ajustes tributarios a **CEMAR** constituyó una clara evidencia que la DEI, bajo la dependencia del Ministro Chong Wong, fue utilizada como instrumento de intimidación y coacción, actuando para ello en contubernio con la firma auditora Palao William y con la empresa semiestatal Lafarge-INCEHSA para concluir la trama de destrucción de **CEMAR**.

- n) En septiembre 12 del 2005, una vez que Lafarge-INCEHSA se había apoderado de los activos de **CEMAR**, esta última solicitó una auditoria fiscal con corte de operaciones al 31 de diciembre de 2004. La DEI emitió la Resolución No. DEI-5854-DA-F-05 mediante la cual notificó ajustes tributarios por 247 mil lempiras, los cuales **CEMAR** canceló de inmediato. Con ello, se obtuvo el finiquito de haber cumplido totalmente las obligaciones tributarias generadas durante todo el período de operaciones de **CEMAR**, lo cual constituye evidencia adicional de que el informe de la firma auditora Palao William era fraudulento y había sido deliberadamente manipulado, inventando un pasivo tributario inexistente. Similares acciones de liquidación de cuentas emprendió **CEMAR** con las municipalidades en las que ejerció el comercio, como corresponde a una empresa responsable.
- ñ) La conspiración fue facilitada en parte por la coordinación del tráfico de influencias, abuso de autoridad y actos de corrupción, tal como lo demuestran las manipulaciones de la firma Palao William, auditores de la empresa semiestatal Lafarge-INCEHSA. El socio principal de dicha firma auditora, Sr. David Palao, ha ejercido por muchos años el cargo de Comisario Social en la Junta Directiva de Lafarge-INCEHSA. En su condición de socio principal de la firma auditora, es el Sr. Palao quien responde por el malicioso informe fiscal elaborado para Lafarge-INCEHSA—en evidente conflicto de intereses— y que, por consiguiente, generó enormes perjuicios morales y económicos a los inversionistas extranjeros de **CEMAR**. Igualmente, el entonces Ministro de Finanzas, Sr. William Chong Wong, era el otro socio fundador de Palao William, representante de Deloitte & Touche en Honduras, y de cuyo despacho dependía la Dirección Ejecutiva de Ingresos (DEI).





- o) En la confabulación contra **CEMAR**, fue determinante el ocultamiento y la retención maliciosa, por "órdenes superiores", - al departamento de auditoria de la DEI, a cargo del Sr. Walter Guevara, quien es uno de los ex funcionarios acusado por la Fiscalía contra la Corrupción, en el millonario caso de defraudación fiscal de Lafarge-INCEHSA contra el Estado- de las resoluciones que contenían los ajustes tributarios determinados en la auditoria practicada por la DEI y concluida el 20 de julio de 2004, que establecieron como único ajuste a pagar por la empresa la suma de 1.09 Millones de Lempiras, en lugar de los más de 95 Millones de Lempiras, inflados dolosamente por los representantes de la firma auditora (Palao William) de Lafarge-INCEHSA, quienes estaban vinculados tanto a las autoridades de la Secretaria de Finanzas como al Cártel Cementero, constituyendo inequívocamente una manera de intimidar y coaccionar a **CEMAR** y adquirir sus activos a precio irrisorio.

## II. INTIMIDACION Y COACCION Y ATENTO CONFISCATORIO DE LAS AUTORIDADES DE LA SECRETARIA DE INDUSTRIA Y COMERCIO (MARCAS Y PATENTES) CON MIEMBROS DEL OLIGOPOLIO CEMENTERO.

- p) El 21 de junio del año 2000, se constituyó CEMENTO AMÉRICA S.A. (CEMAR) habiendo informado tal hecho a la industria y al comercio mediante avisos publicados en el Diario Oficial La Gaceta y otro de mayor circulación.

La información al público y la inscripción del pacto constitutivo en el Registro de Comercio otorgó a CEMAR, el derecho de propiedad exclusiva sobre el uso de la denominación social o nombre del comerciante social.

Un año después, en julio de 2001, la sociedad mercantil Cementos del Norte, S.A. (CENOSA), propiedad, en mayoría de acciones, del señor JAIME ROSENTHAL OLIVA y empresas relacionadas, logró la inscripción fraudulenta de la marca AMÉRICA, que como se evidencia, tal signo es la representación gramatical, visual y fonética idéntica del signo AMERICA que es el principal elemento raíz distintivo de la compañía CEMENTO AMERICA S.A. (CEMAR); el 17 de diciembre de 2003, en medio de la guerra de precios predatorios, el Señor Rosenthal a través de su hijo Yani Rosenthal presentó una demanda de prohibición de uso del nombre AMERICA, con el propósito de obtener una orden de embargo o decomiso contra la producción cementera de CEMAR. Una vez que su asociado en la guerra de precios predatorios Lafarge-INCEHSA despojó a CEMAR de sus activos. CENOSA por medio de su presidente abandonó su demanda.

- q) El 23 de septiembre de 2004, Lafarge-INCEHSA, constituyó una sociedad mercantil con el nombre de "Cemento UNO" en usurpación del derecho de CEMAR del uso de la marca "Cemento UNO" que ya había registrado



CEMAR y que se encontraba en uso, y era de notorio conocimiento o fama en la industria y comercio, ya que era el nombre con que comercializaba exitosamente sus productos. La creación maliciosa de esta compañía con el nombre de la marca registrada por CEMAR se produjo en los momentos en que no se había consumado la expropiación indirecta de CEMAR mediante el despojo de sus activos por parte de la empresa semi-estatal Lafarge-INCEHSA, pero fue un acto claro de iniciar una acción contra CEMAR por el uso de su propia marca.

### **III. COLUSION ESTATAL CON EL OLIGOPOLIO CEMENTERO EN PRECIOS PREDATORIOS CONTRA CEMAR Y EL CONSUMIDOR HONDUREÑO.**

**Desde el inicio de sus operaciones hasta su obligado cierre de operaciones y venta forzada de los activos de CEMAR,** a una subsidiaria de la cementera semiestatal Lafarge-INCEHSA; los Socios y Directivos de CEMAR, principalmente el ciudadano estadounidense OSCAR CERNA, fue objeto de masivos, constante y frecuentes actos de intimidación, coacción y hostigamiento, que provocaron daños económicos, morales y sociales, directa e indirectamente, a su persona, patrimonio, inversión extranjera, y al desaparecimiento forzoso de su empresa, con ocasión de una despiadada y brutal guerra de precios predatorios, desatada principalmente por los **accionistas y directivos de la Cementera Lafarge-INCEHSA,** empresa semiestatal, propiedad de las Fuerzas Armadas de Honduras (FFAA), operada por medio del Instituto de Previsión Militar (IPM), del Gobierno de la República de Honduras, con un poco menos del 50% del capital societario; y, por la Transnacional Cementera Francesa LAFARGE.; en contubernio con altos militares del Instituto de Previsión Militar (IPM), socios y Ejecutivos de la firma auditora Palao William, y altos funcionarios y empleados del Estado de Honduras, de la Dirección Ejecutiva de Ingresos (DEI), de la Secretaria de Estado en los Despachos de Finanzas, durante la Administración del Presidente Ricardo Maduro; Gobierno de la República, que en además asumió una actitud indiferente, de dejar hacer, dejar pasar, ante la intempestiva y fraudulenta disminución del precio del cemento en el mercado nacional, como práctica de competencia desleal, utilizadas por la Lafarge-INCEHSA, en perjuicio de CEMAR, de lato conocimiento, aceptación y displicencia del Gobierno de la República, comprobadas a nivel de Estado, por las investigaciones realizadas en la Secretaria de Industria y Comercio, (SIC), cuando aun operaba en Honduras, CEMENTO AMERICA S.A. (CEMAR); posteriormente y después del desaparecimiento forzoso de la empresa CEMENTO UNO, notificada a la Fiscalía de Protección al Consumidor del Ministerio Público y Procuraduría General de la Republica, **PERO NUNCA CON EL PROPÓSITO DE AMPARAR, PROTEGER o RESTITUIR LA INVERSIÓN PRIVADA, EXTRANJERA QUE REPRESENTABA CEMENTO UNO,** por los precios predatorios del cemento en el mercado nacional , o por los actos de competencia desleal, por parte de la semiestatal Lafarge-INCEHSA; sino más bien, por el alza desmedida y sin control al precio del



cemento, que posteriormente Lafarge-INCEHSA, trasladó al público consumidor, después de haberse encargado de la eliminación de CEMAR del mercado nacional; bajo la apariencia, el Estado de Honduras, de tomar el control de la situación, bajo su responsabilidad, al haber propiciado, por medio de Altos funcionarios de su gobierno, la eliminación de CEMAR del mercado nacional.

Según documentos de la Procuraduría General de la República (PGR) representada legalmente en ese entonces por el Abogado Sergio Zavala Leiva, y que forman parte del expediente No. 224-2004, ante el Juzgado de Letras de lo Contencioso Administrativo de Tegucigalpa, M.D.C., que evidencia entre otras cosas lo siguiente:

**Lafarge-INCEHSA y CENOSA, eliminaron a su única competencia Cemento América S. A. de C.V., (CEMAR) estableciendo precios predatorios llegando a vender, abajo de sus costos de producción, lo cual constituye una actividad de competencia desleal, tipificada como DELITO CONTRA LA ECONOMIA; en nuestro ordenamiento penal, con pena de reclusión y multa pecuniaria, para socios y directivos del oligopolio cementero, para:**

Quienes fraudulentamente determinaron en el mercado una disminución de los precios del cemento;

Quienes con sus actos o procedimientos indebidos obstaculizaron la libre concurrencia en la producción y comercialización de la industria cementera;

Quienes ejecutaron actos de competencia desleal, según las normas establecidas en el código de comercio, otras leyes especiales y convenios internacionales.

**Lafarge-INCEHSA y CENOSA establecieron precios de venta al consumidor final, incluyendo impuestos sobre ventas, flete y utilidad del distribuidor en el mes de febrero del 2004 a Lps.49.69 la bolsa de cemento siendo obvio que el precio en planta a penas llegaría a unos 30 lempiras, a fin de eliminar la competencia de Cemento América S. A. de C.V. (CEMAR); y consolidarse como las únicas en el mercado, y después fijar a su arbitrio el alza a los precios del producto al consumidor, en evidente perjuicio de la colectividad de todo el país en general. Que después de eliminar a su única competencia, Lafarge-INCEHSA y CENOSA sin espera, incrementaron vorazmente, el precio de la bolsa de cemento en el mercado, con aumentos reincidentes;**

**Lafarge-INCEHSA invoca a su favor el "libre mercado", que pocos meses antes, se encargó de destruir, con prácticas desleales, predatorias e inigualables en precios, para la única competencia, que se atrevió a incursionar en el mercado, Cemento América S. A. de C.V. (CEMAR), productora de Cemento UNO.**

**El Procurador General de la República, HACE CLARO MANIFIESTO DEL ILÍCITO PENAL, COMETIDO POR SOCIOS Y DIRECTIVOS DE LA SOCIEDAD LAFARGE-INCEHSA. EN PERJUICIO DE CEMENTO AMÉRICA, S.A. DE C.V. (CEMAR) EN PARTICULAR Y A LA COLECTIVIDAD DE TODO EL PAÍS EN GENERAL, al citar:**



"por cuanto EL AFAN DE LUCRO DEBE DESENVOLVERSE DENTRO DE LIMITES DE RACIONALIDAD, nunca mediante PRACTICAS DE COMPETENCIA DESLEAL, PARA QUEBRAR UN COMPETIDOR Y LUEGO DE ELLO, DEJAR INERME, POSTRADO AL CONSUMIDOR, AL ARBITRIO Y ABUSO DE PARTE DEL EMPRESARIO."

"Es completamente falso que la ilegítima parte demandante haya venido ofreciendo su producto (cemento), "ATENDIENDO LAS LEYES ECONOMICAS QUE RIGEN LA LIBRE COMPETENCIA", ya que en el proceso se demostrará plenamente que, CUANDO ESTABA DESARROLLANDO ACCIONES IMPROPIAS, PARA QUEBRAR, PARA ACABAR LA UNICA COMPETENCIA QUE OSO INCURSIONAR EN EL MERCADO, ESTO ES, CEMENTO AMERICA S.A. DE C.V., (CEMAR), productora de "CEMENTO UNO", que únicamente logró captar un segmento de apenas un 12.5% del Mercado. LAS DOS CEMENTERAS DEL PAIS ESTABLECIERON PRECIOS PREDATORIOS, LLEGANDO A VENDER, INCLUSIVE DEBAJO DE SUS COSTOS DE OPERACIÓN, lo que desde luego constituye una actividad de COMPETENCIA DESLEAL, repudiable por completo,..."

La Constitución de la República, en su Artículo 332 preceptúa que **"El ejercicio de las Actividades económicas corresponden primordialmente a los Particulares. Sin embargo, el Estado, por razones de orden público e interés social, podrá reservarse el ejercicio de determinadas industrias básicas, explotaciones y servicios de interés público y dictar medidas y leyes económicas, fiscales y de seguridad pública, para encauzar, estimular, supervisar, orientar y suplir la iniciativa privada, con fundamento en una política económica racional y planificada."**

"Los comerciantes tienen la obligación de ejercer sus actividades comerciales, de acuerdo con la ley, los usos y costumbres mercantiles, sin perjudicar al público ni a la economía nacional".

Igualmente, la Constitución de la República en su Artículo 339 PROHIBE LOS MONOPOLIOS, MONOPSONIOS, **OLIGOPOLIOS, ACAPARAMIENTOS Y PRACTICAS SIMILARES QUE RESTRINGEN O ELIMINAN LA COMPETENCIA EN LA ACTIVIDAD INDUSTRIAL Y MERCANTIL EN PERJUICIO DE LOS CONSUMIDORES.**

Es aquí, al amparo de normas constitucionales, y de otras Leyes vigentes sobre el caso que nos ocupa, que el Estado de Honduras, debió proteger, asegurar y garantizar la inversión privada de CEMAR, PUES ES DE CONCLUSION OBLIGADA SEÑALAR QUE EL GOBIERNO DE LA REPUBLICA, POR MEDIO DE LOS FUNCIONARIOS YA MENCIONADO, FUE EL PRINCIPAL RESPONSABLE DE LA DEBACLE DE LA EMPRESA Y QUE EL FUTURO DE ESTA ESTUVO EN SUS MANOS EN ESE PRECISO MOMENTO.

**LO ASI ACTUADO POR LA PROCURADURIA GENERAL DE LA REPUBLICA NO FUE CON EL FIN DE AMPARAR, PROTEGER O RESTITUIR LA INVERSION PRIVADA, Y EN ESTE CASO LA INVERSION EXTRANJERA REPRESENTADA POR CEMAR, DE LAS ACTUACIONES DEL OLIGOPOLIO**





**CEMENTERO; SINO LA HISTORIA NOS DEMUESTRA QUE FUE NUEVAMENTE PARA PROTEGER AL OLIGOPOLIO CEMENTERO, A EXPENSAS DEL CONSUMIDOR.**

**DE LO ANTERIOR, SE DEMUESTRA QUE EL ESTADO DE HONDURAS VIOLENTA LA CONSTITUCION DE LA REPUBLICA, SUS LEYES Y LOS DERECHOS HUMANOS DEL PUEBLO HONDUREÑO.**

**SEGUNDO: ATRACO DE LAFARGE-INCEHSA CONTRA EL PATRIMONIO PÚBLICO EN COLUSIÓN CON FUNCIONARIOS Y EMPLEADOS DEL ESTADO PARA FINANCIAR GUERRA DE PRECIOS PREDATORIOS: CNA.**

- a) El 13 de marzo de 2000, la Dirección Ejecutiva de Ingresos (DEI) comisionó al Supervisor Jorge Alberto Romero y a los Auditores Sonia Argentina Díaz, Blanca Ondina Castro y José Hilario Maldonado para verificar integralmente las obligaciones tributarias de la sociedad semiestatal Industria Cementera Hondureña (Lafarge-INCEHSA) durante el período 1996 a 1999.
- b) Realizadas las investigaciones de auditoria se formularon reparos por falta de pagos de impuestos, intereses, multas y recargos por un total de Ciento Treinta y Cuatro Millones Ochocientos Noventa y Siete Mil Novecientos Tres Lempiras con Treinta y Nueve Centavos (L.134,897,903.39).
- c) En el informe de fiscalización 53-2000, el reparo por impuestos debidos al fisco hondureño se redujo de Ciento Treinta y Cuatro Millones Ochocientos Mil Lempiras (L.134,800,000.00) a Ocho Millones Ochocientos Mil Lempiras (L.8,800,000.00). En el informe del Consejo Nacional Anticorrupción (CNA), se señala que en la reducción ilegal de impuestos salieron implicados la firma auditora de Lafarge-INCEHSA (Palao William), altos jefes militares y funcionarios de la administración tributaria, y que la misma reducción sirvió para financiar la guerra de precios predatorios desatada por Lafarge-INCEHSA contra **la fuerte competencia que se avecinaba**. No obstante lo anterior, entendidos en la materia, señalan que detrás de estas defraudaciones existen personajes reconocidos de alto nivel de Honduras, lo cual deja de manifiesto que todo esto es un teatro.
- d) En diciembre del 2008, el Ministerio Público, presentó un requerimiento fiscal o acusación criminal contra los exfuncionarios de la DEI, Rosa Marina Girón, Sub-Directora de Tributación y Walter Napoleón Guevara, Jefe de Auditoria, por el delito de tráfico de influencias en perjuicio de la Administración Pública, relacionados con la reducción ilegal de impuestos de más de 120 Millones de Lempiras de Lafarge-INCEHSA.



- e) A mediados de febrero del 2009 y seguidos los procedimientos legales el Juzgado de Letras dictó auto de prisión contra los imputados antes mencionados por presumirse la responsabilidad en los delitos denunciados.

### **TERCERO. VIOLACIÓN A LA PROPIA IMAGEN Y A LA LIBERTAD DE EMPRESA.**

- a) La sociedad mercantil Cemento América, S.A. de C.V. (**CEMAR**), al colocar la primera piedra de su planta cementera en las inmediaciones de la ciudad de San Lorenzo, Departamento de Valle el 19 de febrero de 2001 con una inversión en la construcción de una planta cementera de aproximadamente 600 millones de lempiras no sólo satisfizo la posibilidad de suplir las necesidades sociales en los mercados de Honduras, El Salvador y Nicaragua, sino que además creó empleos y ofreció una mejor calidad, precios y servicios que las otras cementeras locales.
- b) Durante los meses siguientes, se realizaron las actividades preoperativas de la compañía reclutando y capacitando personal técnico y administrativo, acondicionando espacios físicos e importando gran parte de la maquinaria y equipo. Los procedimientos de importación de la maquinaria y equipo, fueron documentados y garantizados de conformidad a las leyes y disposiciones correspondientes a través de una agencia aduanera con licencia para operar en la gestión de estos procesos.
- c) Sin embargo, el 15 de noviembre de 2001 el Subinspector de Policía Nelson Murillo Pérez, Coordinador Regional de la Dirección General de Servicios Especiales de Investigación (DGSEI) de Nacaome, Valle procedió a decomisar la maquinaria de **CEMAR**.
- d) El 6 de diciembre del 2001, el Sr. Nelver José Núñez Ordóñez, Agente Titular de la Procuraduría General de la República (PGR) en Choluteca, interpuso una dolosa acusación criminal por el delito de defraudación fiscal contra el suscrito y contra Juan José Edwin Díaz, Deydi Monroy, Aurora Robles y contra el propietario de la Agencia Aduanera Chirinos, manifestando que la empresa Cemento América, S.A. de C.V. (**CEMAR**) había desaduanado maquinaria y equipo sin llenar los requisitos para la importación de estos objetos. Acompañó copia de la acusación criminal.
- e) Como consecuencia de dicha acusación criminal el Juez de la Causa, Abogado Teodoro Bonilla Euceda admite dicha acusación, ordena la captura del Sr. Cerna así como del Agente Aduanero y de los otros acusados, a la vez que decreta el secuestro de toda la maquinaria y equipo introducido, como así sucedió.



- f) Todo ello ocurrió acompañado de un amplio despliegue noticioso en los principales medios de comunicación social del país, lo que produce daños severos a la imagen de **CEMAR** y sus socios.
- g) Seguidos los procedimientos judiciales, en fecha 5 el Juzgado de Letras dictó sobreseimiento definitivo en virtud que no existía preexistencia del delito al momento de iniciar la acusación y en consecuencia, no se produjo ilícito alguno, absolviendo de toda responsabilidad criminal al suscrito denunciante y demás imputados habiéndoseles extendido las respectivas cartas de libertad definitivas.

#### **CUARTO: VIOLACIÓN AL DERECHO DEL TRABAJO.**

Las acciones y omisiones de los funcionarios del Estado de Honduras en colusión con la empresa semi-estatal Lafarge-INCEHSA produjeron el despido de ciento sesenta trabajadores directos y más de mil empleos indirectos, provocando mayor empobrecimiento en una zona históricamente débil económicamente.

#### **QUINTO.- VIOLACIÓN A LA PROHIBICIÓN DE LOS MONOPOLIOS.-**

Las acciones y omisiones de los agentes del gobierno violaron el artículo 339 de la Constitución de la República de Honduras que prohíbe los monopolios, oligopolios, monopsonios, acaparamientos y prácticas similares en la actividad industrial y mercantil.

#### **SEXTO. VIOLACIÓN AL DERECHO A LA VIVIENDA Y AL CONSUMIDOR.**

Las acciones y omisiones del Gobierno de Honduras y de la empresa semi-estatal Lafarge-INCEHSA produjo un grave daño al derecho de la vivienda de los hondureños ya que no solo consolidó el oligopolio cementero sino que tuvo el efecto de incrementar en más de un setenta por ciento (70%) el valor de la bolsa de cemento con lo que ha excluido de la posibilidad de tener vivienda propia a miles de familias hondureñas por los altos costos de construcción, en la actualidad el déficit habitacional de Honduras se aproxima a las ochocientas mil viviendas con un crecimiento vegetativo acelerado.

En igual forma, se produjo una violación a los derechos del consumidor en general ya que el impacto de los precios impuestos por el oligopolio cementero con la aquiescencia del Estado ha tenido como resultado un incremento que acumulado oscila entre los seis mil y catorce mil millones de lempiras en el último quinquenio, dependiendo del método que se use para calcular el daño. Sin tomar en cuenta que el producto de **CEMAR** era de mejor calidad, alta resistencia, uniformidad, mayor rendimiento y en consecuencia un mejor producto final de gran aceptación al consumidor.



## **SÉPTIMO: DENUNCIA DE ACTOS DE CORRUPCIÓN POR DIPUTADA DEL PARTIDO UNIFICACIÓN DEMOCRÁTICA (UD).**

Es de público conocimiento que la honorable Diputada Doris Alejandrina Gutiérrez, presentó el 16 de febrero del 2009, denuncia formal ante el Sr. Fiscal Especial Contra la Corrupción del Ministerio Público para que se investiguen y verifiquen hechos constitutivos de los delitos cometidos por funcionarios del Estado en la administración del Presidente Ricardo Maduro (2002-2006) y por personas particulares, que tuvieron que ver con la eliminación de la empresa Cemento América, S.A. de C.V., (**CEMAR**), productora de Cemento UNO, así como del perjuicio ocasionado a todos los consumidores de cemento, la industria de la construcción, la economía nacional y la inversión extranjera. Algunos hechos y circunstancias coinciden con el contenido de la presente Queja.

### **CONSIDERACIONES A LOS HECHOS**

Señor Comisionado Nacional de los Derechos Humanos:

Los hechos relacionados en los acápites del primero al sexto, así como la Denuncia de Actos de Corrupción presentada por la diputada Gutiérrez, forman parte de un proceso de colusión del Gobierno de Honduras con particulares, proceso ilegítimo, arbitrario, abusivo, defectuoso, negligente, discriminatorio y criminal de servidores públicos y particulares, que utilizando las potestades soberanas del Estado y las posiciones de autoridad de sus funcionarios, empleados y agentes de gobierno, crearon las condiciones para destruir a la incipiente competencia en el rubro del cemento representada por la empresa **CEMAR**, aterrorizar a sus socios, asegurar el oligopolio cementero en el mercado hondureño en perjuicio de los consumidores y de los inversionistas que habíamos confiado en la existencia de un Estado de Derecho que garantizara nuestra convivencia armónica en la sociedad hondureña.

El daño moral más que el daño patrimonial, me obligan a presentar esta Queja la cual documento ampliamente a fin que la dependencia gubernamental bajo su digno cargo realice las investigaciones que sean necesarias para denunciar a los responsables intelectuales y materiales de estos hechos delictuosos y generar las acciones judiciales correctivas para evitar la impunidad de la que actualmente gozan los responsables y crear una nueva conducta ética de los servidores públicos enmarcada en el respeto a la Constitución de la República y las leyes que juraron cumplir y hacer cumplir.

La falsa acusación en mí contra y contra inocentes ciudadanos hondureños me produjo graves daños morales sembrando la desconfianza en mis proveedores y socios; la colusión de servidores públicos del Estado que simultáneamente eran ejecutivos de Lafarge-INCEHSA y auditores de la misma empresa exponen el nivel





de degradación moral en que han incurrido ciertos servidores públicos basados únicamente en su convicción que sus actos de corrupción estarán protegidos por la impunidad y falta de castigo.

## FUNDAMENTOS DE DERECHO

Fundo esta denuncia en los Artículos 1, 4, 5, 7, 8, 9, 10, 11, 21, 24, 25, de la Convención Americana de los Derechos Humanos; Artículo 11.1 del Pacto Internacional de Derechos Económicos, Sociales y Culturales adoptado por la Asamblea General de la Organización de Naciones Unidas mediante Resolución 2200 A (XXI) el 16 de diciembre de 1966, suscrito por Honduras, mediante Acuerdo No. 10 del 22 de abril de 1980 y ratificado por Decreto No. 961 de la Junta Militar de Gobierno en Consejo de Ministros del 18 de junio de 1980, publicado en la Gaceta número 23.167 del 30 de julio de 1980; Artículos 1, 6, 9, 10, 16, 20, 21, 22, 23, 28, 30, 38 y demás aplicables de la Ley Orgánica del Comisionado de los Derechos Humanos; Artículos 1, 15, 18, 30, 31, 59, 60, 61, 62, 63, 69, 76, 82, 89, 90, 178, 179, 321, 322, 323, 324, 325, 326, 327, 339 de la Constitución de la República; Art. 349 y subsiguientes del Código Penal.

## PETICIÓN

Al Señor Comisionado Nacional de los Derechos Humanos pido:

Admitir la presente Queja y tener por presentados los antecedentes documentales enviados a la oficina del Comisionado Nacional; que consisten en:

- a) Investigación de la industria cementera en el 2004 por la Secretaria de Industria y Comercio en conjunto con la Fiscalía al Consumidor del Ministerio Público (MP), referente a los precios predatorios que fue víctima **CEMAR** departe de Lafarge-INCEHSA.
- b) La posición del Procurador General de la República (PGR) en el 2004, relacionado con las prácticas ilegales realizadas por el oligopolio cementero (Lafarge-INCEHSA y CENOSA) en la quiebra y eliminación de **CEMAR**, afectando también al consumidor y a la economía general del país.
- c) Denuncia de actos de corrupción presentada ante la Fiscalía Especial Contra la Corrupción por la Diputada Doris Gutiérrez, el 16 de febrero de 2009, relacionada con la confabulación de las autoridades del Gobierno de Honduras en la administración Maduro, con la empresa semi-estatal Lafarge-INCEHSA, la firma auditora Palao Williams y altos jerarcas militares del IPM.



- d) Cronología de la confabulación de la DEI, Lafarge-INCEHSA, la firma de auditores Palao Williams y funcionarios del Gobierno de la administración Maduro, en particular la Secretaria de Finanzas, relacionados con el terrorismo fiscal practicado en contra de **CEMAR** con consecuencias al consumidor.
- e) Cartas de Congresistas Estadounidenses enviadas al Señor Presidente José Manuel Zelaya, relacionadas con la expropiación de **CEMAR** y las violaciones de los Derechos Humanos al Señor Cerna.
- f) Cronología de la acusación ilegal contra el Sr. Cerna y confiscación de los bienes de **CEMAR** y otras arbitrariedades.
- g) Cronología y documentación del intento confiscatorio de la marca "América" propiedad de **CEMAR**, por la empresa Cementos del Norte (CENOSA) en ese momento presidida por el Abogado Yani Rosenthal, en confabulación con las autoridades de la Secretaria de Industria y Comercio en el registro de marcas y patentes.
- h) Grabación tanto en disco compacto como su transcripción, que pone en manifiesto la trama para cerrar ilícitamente **CEMAR**, en grave perjuicio del Estado y del consumidor, grabación que contiene la plática de un ejecutivo Lafarge-INCEHSA con un vendedor de cemento. Se trata de la conversación entre Darío Mencia, Gerente de Ventas de Lafarge-INCEHSA, con Julio López, Propietario de la Distribuidora de Cemento El Campeón. La amenaza del ejecutivo de Lafarge-INCEHSA contiene claramente el hecho de rebajar premeditadamente los precios del cemento, a fin de eliminar a **CEMAR**, promoviendo y ejecutando una acción dolosa.
- i) Análisis legal de la firma de abogados internacional Greenberg Trauring, relacionado con la intervención directa e ilegal del Gobierno de Honduras en la eliminación de **CEMAR**.
- j) Se adjuntaron hojas de referencia del Grupo Lafarge que constatan las reincidentes prácticas monopólicas, fijación de precios y restricción de competencia en más de una docena de países y por las cuales ha sido objeto de multimillonarias multas y sanciones.

Que si bien es cierto los abusos ocurrieron hace más de una año, pido la admisión de esta Queja, no solo por la gravedad del caso y la injusticia cometida sino porque los efectos de las violaciones denunciadas son presentes y patentes todavía en contra de los intereses de los consumidores, los trabajadores desempleados y de mis propios derechos tutelados por la Constitución de la República y la convenciones internacionales, aparte que tuve que establecer mi residencia fuera de Honduras, tener por rendida mi declaración, realizar las investigaciones conducentes, extender la protección del Comisionado de los Derechos Humanos al suscrito para la necesidad de mi integridad personal;



continuar adelantando la investigación y en definitiva resolver declarando violados o lesionados los derechos de propiedad, la libertad de industria, comercio, empresa y contratación de mi persona así como violados el derecho al trabajo de quienes fueron mis empleados y el derecho a la vivienda de los hondureños, por parte de los funcionarios, empleados y agentes del Estado involucrados en estas violaciones a los derechos humanos, dictando las recomendaciones y sugerencias que correspondan.

Tegucigalpa, M.D.C., 13 de mayo de 2009.



# GOVERNMENT OF HONDURAS (GOH) INFRINGEMENT OF CEMAR RIGHTS

**Jun 00**  
Incorporation of Cemento America, with express protection of "CEMAR" as alternate trade name

**Jul 01**  
Honduras Intellectual Property Registry (IPR), grants conflicting cement trademark ("America") to CENOSA - infringing on CEMAR's rights

**Aug 03**  
IPR grants registration of "Cemento UNO" trademark to CEMAR

**Oct 03**  
CEMAR launches Cemento UNO brand; A complex conspiracy - to block CEMAR's entry into the market - lies in wait, starting with a vicious predatory price war

**Dec 03**  
CENOSA files (in bad faith) for injunction & sanctions against CEMAR over usage of "America" name; summons is never served on CEMAR showing IPR complicity

**Jun 04**  
CEMAR finally succumbs to conspiracy (including price war), and shuts down operations

**Jul 04**  
Honduras IRS becomes actively involved in conspiracy against CEMAR, manipulating audit results, putting Cerna at risk of criminal prosecution, as happened in 2001-02

**Aug 04**  
IPR summons served on CEMAR - eight months late - (timed to apply maximum pressure on CEMAR to sell out (concur with Honduras IRS intimidation, harassment and withholding of CEMAR audit resolution).

**Sept 04**  
"Cemento Uno de Honduras"-formed by Lafarge-INCEHSA, the military affiliated cement company- another infringement of CEMAR rights

**Oct 04**  
CEMAR sells out - under extreme duress & in fear of additional government prosecution - to a subsidiary of Lafarge-INCEHSA

\* A cement company controlled by one of Honduras most influential and controversial families, well-known to the U.S. Embassy and whose members have been high-ranking government officials, and been implicated in numerous corruption and abuse of power cases over many years.

**IPR INFRINGEMENT OF CEMAR RIGHTS WAS A KEY ELEMENT IN A LARGER SCHEME  
THROUGH WHICH THE GOH EXPROPRIATED CEMAR**





## HONDURAN GOVERNMENT COLLUSION IN THE INFRINGEMENT OF “CEMENTO AMERICA” NAME

1. On June 21, 2000, Cemento America, S.A. de C.V. was incorporated in Honduras, with the article of incorporation expressly including approval of the “CEMAR” acronym.
2. Prior to July 2, 2001, Cementos del Norte (CENOSA, a member of the local cement cartel) filed a bad-faith application to register the “*America*” trademark for use in the cement industry, which registration was granted by the **Honduras Intellectual Property Registry (IPR)** on July 2, 2001. The registration was legally void due to CEMAR’s earlier filing, however, CENOSA and the **Government of Honduras (GOH)** conspired in said improper registration which was an intentional infringement of CEMAR’s rights, all as part of a larger scheme to block CEMAR’s entry into the Honduras market.
3. On February 12, 2003, Cemento America was granted a separate registration of the “CEMAR” name, as both a trade name and a trademark for use in the cement industry, by the same GOH agency (IPR).
4. On August 29, 2003, Cemento America was granted registration of “Cemento UNO” both as a trade name and a trade mark for use in the cement industry, by IPR.
5. On October 1, 2003, Cemento America entered the Honduran market and launched its product under the “Cement UNO” trademark. The local cement cartel<sup>1</sup> (comprised of CENOSA and the partially military owned INCEHSA) immediately unleashed a relentless predatory price war (as was later determined by several agencies of the GOH), coinciding with acts of systematic government extortion and other illegal government practices against Cemento America.
6. On December 17, 2003, CENOSA, under a power of attorney extended by the company’s President, Yani Rosenthal (Minister of the Presidency in President Manuel Zelaya Administration 2006-08), filed a petition before IPR to enjoin Cemento America from using the word “*America*” in the cement industry. In its petition, CENOSA asserted legal ownership of the “*America*” trademark, and requested that IPR impose sanctions on Cemento America for alleged anti-competitive practices.
7. On December 22, 2003, IPR admitted the petition filed by CENOSA and ordered that Cemento America be notified to appear before IPR (the “December 22, 2003 Order”); however this Order was not served upon Cemento America, contrary to applicable procedural laws.
8. In June 2004, Cemento America was forced to shut down operations as a result of the predatory price war and other illegal practices of GOH officials in collusion with the cement cartel.

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<sup>1</sup> Both companies have close ties to the government. INCEHSA is partially owned by the Honduras Military (at least 42%) and CENOSA is largely owned by current and former Honduran questionable politicians and their powerful families. Both companies were agencies of the Honduran Government until they were privatized in 1991-2 in a very controversial program that resulted in millions of dollars in losses to the Government. Principals of both companies have been implicated in corruption and abuse of power cases in recent years.



Honduran Government Collusion in the  
Infringement of "CEMENTO AMERICA" name

9. On August 17, 2004, formal notice of the December 22, 2003 Order was finally served by IPR against Cemento America, almost eight months after its effective date and four months after Cemento America had suspended operations. At this time (August 2004), Cemento America was already suffering intimidation and harassment by other GOH agencies, including the Honduras IRS, Ministry of Finance, and the Military. It was clear that service of the December 22, 2003 Order had been intentionally delayed (contrary to applicable procedural laws) to have a more damaging impact on Cemento America, who eventually succumbed and sold its assets under extreme duress to the partially military-owned INCEHSA.
10. On September 3, 2004, Cemento America appeared before IPR to respond to CENOSA's malicious charges. CEMAR asserted ownership of all legal rights to the "*Cemento America, S.A. de C.V.*" corporate name, as well as its acronym, CEMAR, through its incorporation charter and its subsequent registration, all before the "*America*" trademark was purportedly registered by CENOSA with IPR. IPR did not issue a decision at this hearing.
11. On September 23, 2004, the partially military-owned INCEHSA illegally incorporated a new company named Cemento Uno de Honduras, S.A., another flagrant infringement of Cemento America's property rights by Honduras Government Agency, IPR. This act, by itself, constituted a criminal dispossession of CEMENTO AMERICA's right to the exclusive use of the "CEMENTO UNO" register trade name and trademark.
12. On October 27, 2004, under extreme duress and in fear of additional government prosecution, Cerna sold CEMAR's assets to a subsidiary of the partially military-owned Lafarge-INCEHSA, for pennies on the dollar.
13. On January 27, 2007, upon examination of IPR files regarding the "America" trademark dispute, it was determined that CENOSA had abandoned its petition after September 6, 2004, and that CENOSA had never provided evidence supporting the alleged violations by Cemento America.

**CONCLUSION**

- The above are instrumental elements in the conspiracy among the Government of Honduras Agencies and the cement cartel against the U.S. investment, Cemento America, in violation of Honduras laws and treaties.
- The Honduras Government direct and illegal intervention, along with the intimidation and harassment of Cerna by key government agencies and the illegal subsidies to the partially military owned cement company, INCEHSA, in their totality constitute the expropriation of Cemento America by the Honduras government.



**MINISTRY OF INDUSTRY AND COMMERCE**  
**GENERAL DIRECTORATE FOR INTELLECTUAL PROPERTY**  
Office of the Industrial Property Registry  
Republic of Honduras

**TRADEMARK REGISTRATION CERTIFICATE**

AMERICA

**AMERICA**

Registration No.  
82015

Book No.  
103

Page No.  
15

Registration Date: July 2, 2001  
Class 19 International.

Approving Resolution:  
No. 1575 dated July 2, 2001

Registrant: CEMENTOS DEL NORTE. S.A. Incorporated in HONDURAS, C.A., and  
domiciled in San Pedro Sula, Cortes, HONDURAS, C.A.

Legal Representative: DIANA E. HANDAL

Validity: Ten Years

Other Registrations:  
None

Reservations: \*\*\*\*\* None \*\*\*\*\*

Type of Product:  
CEMENT

\*\*\*\*\* Final line \*\*\*\*\*

I hereby attest that the information contained herein is a true copy of the information  
contained in the respective docket, as filed in this Office.

Tegucigalpa, M.D.C., July 3, 2001

*[Signed]*  
ERUDINA E. CHAVEZ  
Registrar, Industrial Property



*[Official letterhead]*

MINISTRY OF INDUSTRY AND COMMERCE  
REPUBLIC OF HONDURAS

GENERAL DIRECTORATE FOR INTELLECTUAL PROPERTY. OFFICE OF THE  
REGISTRY OF INDUSTRIAL PROPERTY. Tegucigalpa, M.D.C., December 22,  
2003.

Let the petition "PROHIBITION AND ADMINISTRATIVE SANCTION FOR THE  
INAPPROPRIATE USE OF A TRADEMARK (AMERICA)" be admitted, as  
presented by ZAGLUL C. BENDECK, P.A., acting in his condition as Attorney for  
CEMENTOS DEL NORTE, S.A. de C.V.; regarding a prohibition filed against  
CEMENTO AMERICA. According to the due process of law, let the defendant be  
summoned to appear before this General Directorate to be informed of the  
contents of the complaint. LET IT BE ENTERED.

*[Signed and sealed]*  
MARVIN F. DISCUA S.  
Director General for Intellectual Property

ryt\*.





*[Official letterhead]*

REPUBLIC OF HONDURAS  
MINISTRY OF INDUSTRY AND COMMERCE

Tegucigalpa, M.D.C.  
August 17, 2004

Mr. OSCAR CERNA ARGUELLO  
President  
CEMENTO AMERICA, S.A. CEMAR  
Col. Elvel San Rafael, Calle Retorno  
Kove No. 29  
Tegucigalpa, M. de D.C.

Dear Mr. *[Cerna]*:

This office would like to inform you that on December 17, 2003, ZAGLUL BENDECK, P.A., acting in representation of CEMENTOS DEL NORTE S.A. DE C.V., filed a complaint requesting "PROHIBITION AND ADMINISTRATIVE SANCTION FOR THE INAPPROPRIATE USE OF A TRADEMARK..." against Cemento America, S.A. CEMAR, regarding the AMERICA trademark. In view of your right to a defense, you, in your condition as legal representative, are hereby summoned to appear personally, or through an attorney, before the General Directorate for Intellectual Property, located at Edificio San Jose, first floor, Boulevard San Jose, at 09:00 A.M. on Friday, August 20 of this year, to be duly notified through a single copy of the above-mentioned Prohibition, and to set the time period for you to respond and present a defense. You are hereby warned that your refusal to appear will carry penalties as established by law.

*[Signed and sealed]*  
MARVIN F. DISCUA S.  
Director General for Intellectual Property

In the city of Tegucigalpa, Municipality of the Central District, as of \_\_\_\_\_, 2004;  
the summons was served, duly signed as evidence thereof.

SIGNED \_\_\_\_\_



**INJUNCTION AND ADMINISTRATIVE SANCTION FOR THE IMPROPER USE OF A TRADEMARK. DOCUMENTS ARE HEREBY ATTACHED.**

Mr.  
Olman Lemus, P.A.  
Industrial Property Registrar  
His Office

I, ZAGLUL C. BENDECK S., Honduran citizen, of legal age, married, Attorney at Law, and of this domicile, admitted to the Honduran Bar Association under Number 01158, with offices located at Costado Este de la Iglesia Guadalupe 144, Tel. 232-4507, acting in my condition as legal representative of CEMENTOS DEL NORTE, S.A. DE C.V., a corporation domiciled in San Pedro Sula, Cortes, as I accredit it through a duly authenticated Attorney which I have attached hereto; respectfully appear before you, in time and form, requesting an INJUNCTION under the above-mentioned terms, as a result of the improper use of the AMERICA trademark, registered under No. 82015, Book 103, Page 15, dated July 2, 2001, under Class 19, registered in favor of my principal.

**FACTS**

1. My principal, CEMENTOS DEL NORTE, S.A. DE C.V. registered the trademark AMERICA under No. 82015, Page 15, Book 103, for trading in cement, under International Class 19; such trademark is currently valid.
2. On several dates and in different publications in newspapers and magazines, Cemento Uno has published diverse advertisements, each of which, at the bottom, had the following written legend: CEMENTO AMERICA.
3. The fundamental motive for the Injunction is the fact that my principal registered in its favor the AMERICA trademark on July 2, 2001. The corporation that produces CEMENTO UNO is using our trademark in what constitutes a clear violation of my Principal's exclusive rights to the AMERICA trademark, since the consumer can easily relate such product to our trademark, as used in the packaging for our CEMENTO BIJAO TIPO I "AMERICA". Our current legislation establishes that all commercial acts or acts carried out in connection with commercial activities that contradict the rules of good faith and practice in the trading of goods and services are to be treated as acts of UNFAIR COMPETITION. The use of a trademark which causes confusion as to the origin of the corporation that manufactures such a product constitutes an act of deception and is punishable by law.

Cement Type I AMERICA (registered by Cementos del Norte)  
Cemento AMERICA (use improperly by Cemento Uno)



In order to avoid the deceptive consequences, such denomination may no coexist. Therefore, it is obvious that the improper use is causing losses and damages to my Principal, who acquired the right to its use, manufacturing and notoriety commencing on the above-mentioned date.

4. Given that the Office of the Industrial Property Registry is the Government's specialized entity on this matter and the only office capable to determine if a violation of the law has occurred, its opinion on this matter is hereby requested.

#### LEGAL GRONDS

Articles 80, 81, 84, 96 numbers 1, 5, 6, 6 letter c, 170, 171 and 173, and others of the Industrial Property Law, as applicable.

#### PETITION

Based on the foregoing, to the Industrial Property Registrar I hereby request to admit this petition along with the accompanying documents; to have this Petition for an Injunction and Administrative Sanction as presented in time and form; to process it according to the procedures as established in the Industrial Property Law; to issue an injunction against the violator for its improper use of the AMERICA trademark, and to impose administrative sanctions against it by taking into consideration the severity of the infraction and the economic resources of the offender.

Tegucigalpa, M.D.C., December 15, 2003.

*[Signed and sealed]*  
ZAGLUL C. BENDECK



# PRICEWATERHOUSECOOPERS

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(Official Letterhead-English Translation)

PricewaterhouseCoopers Nicaragua  
PricewaterhouseCoopers, S.A  
Apartado Postal 2697  
Managua, Nicaragua  
Telefonos:270-9950-Fax:270-9540  
E-mail: pwc@amnet.com.ni

## DECLARATION

We hereby acknowledge and affirm that Mr. Silvio Bendana Mora worked for this firm as Manager in charge of our Department of Tax Services for the periods from May 20, 1997 through January 31, 2004, and from May 3, 2004 through January 8, 2007, after which he took voluntary retirement.

During the time that he worked with our firm, Mr. Bendana always demonstrated a professional conduct, capacity and responsibility in the projects assigned to him.

We address the within to whom it may concern, in the city of Managua, Nicaragua, this fifteenth day of April, 2009.

Santos Ramiez Ortega  
Manager of Administration





## **TAX AND LEGAL ASPECTS OF INDIRECT EXPROPRIATION OF CEMENTO AMERICA (CEMAR)\***

(Legal Analysis Summary)

Silvio Ivan Bendana, former Tax Division Chief for the Nicaraguan office of PriceWaterhouseCoopers (1997-2006), and Manuel Gutierrez Hurtado, former General Counsel for the Nicaraguan IRS (1991-97, and 2005-07), have conducted a full review of the tax and legal aspects of the indirect expropriation of Cemento America (CEMAR) case in 2004, and have issued their legal opinion to the effect that:

1. Authorities of the Honduras IRS under the Minister of Finance, acted in conspiracy with the part-military cement company, Lafarge-INCEHSA, and principals of the influential Palao William auditing firm (Honduras representative of Deloitte & Touche), and with the purpose of eliminating CEMAR and reestablishing the cement monopoly that had existed prior to CEMAR's arrival;
2. The Honduras government also interfered in the investment (CEMAR) of Oscar Cerna, a U.S. citizen and principal partner of CEMAR, committed violations of his human rights, and forced Cerna to transfer the assets of CEMAR to a subsidiary of the part-military cement company, in which the Honduras military through its Institute of Military Provision (IMP), held a substantial ownership interest, all in violation of the Honduras Constitution, the U.S.-Honduras Bilateral Investment Treaty (BIT 2001), the American Convention on Human Rights and the Honduras Tax Code;
3. Among other things, Honduras officials and other co-conspirators on two separate occasions put Cerna in jeopardy of criminal sanctions, first, by bringing a malicious criminal proceeding against Cerna for an alleged import tax fraud, and confiscating all machinery and equipment at the cement plant, and later, through manipulation by taxing authorities to make it appear that CEMAR was guilty of evasion of more than \$5,000,000 in income taxes;
4. Having transferred the assets of CEMAR under extreme duress and possible government prosecution, at a fraction of their value, without other compensation, Cerna was the victim of an indirect expropriation by the Government of Honduras and its powerful agencies;
5. The Honduras officials involved in this expropriation improperly benefited through an illegal enrichment.

**\* Complete document available upon request.**



## **HONDURAS IRS COLLUSION SCHEME**

### **With PART-MILITARY CEMENT COMPANY and AUDITORS to ELIMINATE CEMAR**

#### **Government of Honduras (GOH) & Private Sector Insiders involved:**

- INCEHSA, a cement company created and managed by the GOH and the Military. Now owned at least 42% by the Honduras military, and a French cement company.
  - The Cement Cartel is composed of INCEHSA and CENOSA (formerly owned by the GOH, now substantially owned by Honduran politicians). Principal of both companies have been implicated in corruption and abuse of power cases.
  - The Honduras IRS, under the Ministry of Finance headed by then Minister William Chong.
  - Palao William Auditing Firm, whose principal shareholders and partners are Minister William and David Palao, clients include INCEHSA, CENOSA and the Honduras Military.
1. Since February 1998, David Palao has been INCEHSA's Board of Directors Shareholders Representative. A conflict of interest because Palao is also the Managing Director of INCEHSA's auditing firm, Palao William. According to local laws, an individual may not hold the position of Shareholders Representative for more than three consecutive years. Palao has consistently held the position through 2007.
  2. On June 21, 2000, Cemento America-CEMAR (a \$27 million U.S. investment) incorporated in Honduras to build and operate a cement plant with distribution throughout the region. Oscar Cerna, a U.S. citizen, was President and CEO.
  3. On January 27, 2002, William Chong was appointed Deputy Minister of Finance for Internal Revenue, under the new President Maduro Administration. On September 1, 2004, William Chong officially became Minister of Finance. (There is evidence that Minister William never properly severed his financial ties with the Palao William Auditing Firm, as required by law, during his tenure with the Ministry of Finance).
  4. On October 1, 2003, CEMAR started commercial operations in Honduras. The Cement Cartel immediately unleashed a relentless predatory price war (as per officials findings by key GOH agencies), in collusion with GOH high level officials, and coinciding with a campaign of government harassment and intimidation against CEMAR.
  5. On December 3, 2003, Honduras IRS officials visited CEMAR headquarters and announced a tax audit. (In Honduras, such an audit is rarely sought until a business has been operating for two to three years- CEMAR had only been in operation for two months). The predatory price war and the government harassment- damaging on their own- were actually part of a larger scheme to bankrupt CEMAR and block its entry into the Honduras cement market. The final stages of the scheme commenced with the tax audit. CEMAR requested and obtained an extension to May 17, 2004.



6. On December 16, 2003, Cerna wrote to the U.S. Embassy in Honduras complaining about the intimidation and harassment of CEMAR by the Honduras military and government agencies, including the Honduras IRS, Customs, Immigration, and Environmental Departments.
7. On May 17, 2004, Honduras IRS auditors initiated the audit of CEMAR.
8. In June 2004, CEMAR was forced to shut down plant operations, no longer able to fight on against the government forces aligned to eliminate it from the Honduras market. During this time, Cerna's personal safety was also threatened on several occasions.
9. On July 12, 2004, under extreme duress Cerna signed an agreement to sell his CEMAR shares to INCEHSA (the partially military owned cement company). This agreement required a "routine" financial and tax due diligence report. INCEHSA suggested the Palao William Auditing Firm to conduct the due diligence and Cerna agreed, unaware of any conflict of interest, and of the complex scheme brewing against him at that time.
10. On July 20, 2004, Honduras IRS auditors issued a report on the May 17, 2004 tax audit of CEMAR and found a minor tax liability in the amount of \$59,200. The Honduras IRS auditors informed CEMAR that the official resolution would be issued in the following days, given that CEMAR had fully accepted the charges, therefore effectively concluding the tax review. However, the Honduras IRS under Minister William Chong would intentionally withhold the official resolution of CEMAR's tax liability for more than 90 days, in connection with the greater government scheme against CEMAR.
11. On August 6, 2004, INCEHSA's auditors (Palao William Auditing Firm) issued a fraudulent due diligence report on CEMAR's tax liability, claiming unpaid tax charges of \$5.13 million. The Palao William Auditing Firm's report was knowingly fraudulent, as the firm knew (partner Chong Wong was acting Minister of Finance) that CEMAR's true tax liability did not exceed \$59,200. Upon "discovering" this information, INCEHSA threatened Cerna with breach of contract and government criminal actions.
12. On August 11, 2004, with no alternative but to try to save the July 12th contract, CEMAR assembled a team of Honduran tax professionals to review the alleged tax liability determined by the Palao William Auditing Firm. The CEMAR team issued a report confirming that 98% of the alleged tax liability was manipulated and fraudulent.
13. On August 20, 2004, ignoring the CEMAR report and using their original fraudulent due diligence report as justification, INCEHSA cancelled the July 12, 2004 agreement by refusing to purchase the CEMAR shares. CEMAR's leading bank began foreclosure of the CEMAR plant, and CEMAR's creditors and employees began suing the company.
14. Days later, INCEHSA (the part-military cement company), offered to selectively purchase CEMAR's assets, in lieu of the original stock purchase, on imposed terms and at a greater loss to Cerna than under the original agreement.
15. On October 27, 2004, under extreme duress and in fear of additional government prosecution (as had previously occurred in 2001-02), Cerna closed on the sale of CEMAR's assets to a subsidiary of INCEHSA, for pennies on the dollar.



16. On October 29, 2004, exactly two days after that closing, the Honduras IRS belatedly released the resolution that had been withheld since July 20, 2004. This resolution documented the correct \$59,200 tax liability rather than the \$5.13 million tax liability claimed by the Palao William Auditing Firm.
17. The intentional withholding of the CEMAR resolution is clear evidence that the Honduras IRS under Minister William Chong was acting in collusion with the Honduras military and with the Palao William Auditing Firm in a scheme to eliminate CEMAR.
18. In 2005, CEMAR was issued a "clean bill of health," by the Honduras IRS, further proving that the report of the Palao William Auditing Firm was manipulated and fraudulent.
19. In 2005, Minister William, Palao and their Palao William Auditing Firm, along with the Honduras IRS and the Honduras Military<sup>1</sup> were implicated by the Honduras Anti-Corruption Agency (CNA) as key participants for illegally reducing a +\$10 million tax liability of Lafarge-INCEHSA, a part-military cement company (the years investigated were 1996-1998 when the Honduras military through its Institute of Military Provision-IMP- owned and managed the cement company). The Anti-Corruption Agency Report stated that these resources aided the Honduras military in eliminating the competition (CEMAR) from the Honduras market.
20. In 2008, the Honduras Attorney General Office, indicted several former Honduras IRS agents involved in the part-military cement company tax liability scheme.
21. In Feb 2009, the Honduras Criminal Court validated the charges against the former Honduras IRS agents and a trial date is pending. Honduras citizens familiar with the case are concerned regarding the fact that only low levels agents involved in the scheme were indicted and the responsible parties for the "superior orders" have not been challenged.

## CONCLUSION

1. As a result of the forced sale of the assets of CEMAR to Lafarge- INCEHSA (the part military cement company), the GOH executed the indirect expropriation of the investment made in Honduras by U.S. citizen Oscar Cerna. The GOH failed to comply with its unavoidable obligation to accord "fair and equitable treatment and full protection and security" to CEMAR's "covered investment", and, to the contrary, became the vehicle for the conspiracy executed by the Honduras military, the Cement Cartel and their auditing firm, Palao William against Cerna and CEMAR.

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<sup>1</sup> The Military cement activities through its IMP have been at the core of many corruption scandals with high-ranking Honduras government and military officials implicated, as documented by the Honduras Attorney General. In February 1998, IMP sells part of its cement company to Lafarge for \$50 million, retaining more than 42% and stop payment of their original government loan. In November 2003, the Honduras government granted a new loan extension to IMP already in default for five years, for approximately \$4 million.





2. The ability of the Honduras military and its partners in the Cement Cartel to carry out their ill purposes by manipulating GOH institutions instilled in Cerna a fear of criminal prosecution by the GOH. This was evident in the case of the illegal prosecution on tax evasion brought against Cerna in 2001, as a result of the importation of CEMAR's machinery and equipment into Honduras. A Honduras court in Nacaome issued an arrest warrant against Cerna and ordered the confiscation of CEMAR assets, all with the evident purpose of forestalling the construction of the company's cement plant. In April 2002, the Judge stated that no crime was ever committed, the accusation was groundless, the CEMAR assets were released and the arrest warrant against Cerna was cancelled.
3. The acts performed by Minister William Wong, in collusion with David Palao, his partner in the Palao William Auditing Firm, and other Honduras IRS officials who maliciously withheld the official resolutions regarding CEMAR's tax liability, are illegal and of a criminal nature, and can be rightly classified as serious conflict of interest, influence trafficking, abuse of authority and dereliction of duty, among others, that are tantamount to corruption at the highest level of the Honduras Government during the Administration of President Ricardo Maduro (2002-2006).



## **Intimidation by Honduras IRS**

(Other measures to impede CEMAR, or to promote its competitors)

Even after it became obvious that CEMAR was defeated and would have to leave the Honduran market, its tormentors would not give up their efforts to teach Mr. Cerna a lesson: the lesson that competition from foreigners was not welcome in the cement sector.

Not yet aware of the scope of the conspiracy against him, Mr. Cerna commenced negotiations<sup>1</sup> to sell CEMAR to one of its competitors, INCEHSA, the partially state-owned cement company. These negotiations themselves, however – unbeknownst to Mr. Cerna – were just one more step in the conspirators' plan to destroy him. And the Government tax authorities played a particularly active role during this operation.

When signing the contract to purchase CEMAR, INCEHSA insisted that its own auditors conduct the customary due diligence. In early August 2004, the auditors "discovered" \$5.1 million of unpaid taxes owed by CEMAR (despite the results, a month earlier, of a Government audit that showed only \$60,000 in unpaid tax liability). When CEMAR demanded an official resolution of the tax audit needed in order to pay the liability and, more importantly, to rebut the auditors' due diligence findings, the tax authorities refused to issue it.

The contract negotiations were really a trap, carefully designed by the Government and CEMAR's competitors and their auditors. INCEHSA dragged out the talks. Finally, using the "discovered" \$5.1 million of unpaid taxes as a premise, the purchaser canceled the contract and advised Mr. Cerna that there would be no further negotiations. Under that measure of additional duress, the hostile takeover was then redesigned as an assets purchase, rather than an acquisition of equity, and the total compensation package was effectively lowered by some \$12 million.

The auditors who oversaw this transaction were none other than the auditors of both INCEHSA - the principal competitor of CEMAR – and IPM, its shareholder.<sup>1</sup> The Government deliberately held back its final determination of the real tax debt as the closing progressed, ensuring that the auditors' view was accepted as correct. Two days after the deal closed, the Government issued a report stating that, in fact, the unliquidated Tax liabilities of CEMAR had been on the order of \$60,000 after all.

In 2005 CEMAR requested a final audit, after which the tax authorities issued CEMAR a "clean bill of health."

***\* Excerpt from Greenberg and Traurig, Legal Analysis, page no. 7***

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<sup>1</sup> At the time, the two principal partners of this auditing firm also served as the Minister of Finance and the shareholders' representative to the board of directors of INCEHSA, respectively. The latter was also the Managing Director of the auditing company.

IPM, which operates under a constitutional and legislative mandate, is presided over by the Chief of the Armed Forces, and is managed by powerful serving and retired military officers, owns 42% of the outstanding equity in INCEHSA. (*Excerpt from Greenberg and Traurig Legal Analysis pg. 2*)



## **GOH Illegal Subsidies to Military Co.**

(The controlling cement industry duopoly)

For years, the cement industry in Honduras has been dominated by two firms: Cementos del Norte, S.A. (CENOSA, previously known as CEHSA), and Industria Cementera Hondureña, S.A. (INCEHSA). Both companies had been agencies of the Honduran Government until they were privatized in 1991-2: a very controversial program that resulted in millions of dollars in losses to the Government.<sup>3</sup>

CENOSA is largely owned by Honduran politicians and their powerful families. These included, until January 2008, the Minister of the Presidency, whose role is roughly comparable to the White House Chief of Staff in the United States.<sup>4</sup> This is the same individual who was President of CENOSA at the time CEMAR was entering the market. Several of the principal figures in CENOSA have been implicated in other incidents of corruption and abuse of power.

Since 1998, INCEHSA has been a partnership or joint venture between the Honduran Government, through its Military Pension Fund (IPM), and the French multinational enterprise Lafarge. IPM, which operates under a constitutional and legislative mandate, is presided over by the Chief of the Armed Forces, and is managed by powerful serving and retired military officers, owns 42% of the outstanding equity in INCEHSA. Like CENOSA, INCEHSA has connections with powerful Government officials. Its former General Counsel was the President's Chief Legal Counsel until January 2008, and is the current Minister of the Presidency. The Chief of the Armed Forces—that is, the President of IPM—is also the Vice President of INCEHSA's Board of Directors.

As a result of serious mismanagement, IPM was forced to shut down most of its commercial companies, resulting in millions of dollars of losses which by law were assumed by the Honduran Government. The IPM scandal was well documented in an independent audit performed under the auspices of the United Nations. INCEHSA therefore became the principal source of revenues for IPM, creating great incentive for IPM to support INCEHSA's dominant position in the cement market. This incentive made the influential Honduras military into a powerful opponent of any new competition in the market.

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<sup>3</sup> In 1997, the Honduran Anti-Corruption Commission detailed the fraudulent privatization of INCEHSA for the benefit of IPM, and recommended criminal charges against numerous ex-government officials, including former President Rafael Callejas.

<sup>4</sup> Among other things, the Minister of the Presidency oversees management of Millennium Challenge funds, now the largest single U.S. aid package to Honduras.



The Government has a significant commercial interest in the continued viability of its investment in INCEHSA, and its managers have a personal interest as well. And the Government has consistently acted to protect its investment, through the actions and omissions described in this memorandum, but also through questionable subsidies and debt forgiveness extended to the members of the duopoly. Nor is this an insignificant commercial contribution: over the years the aggregate Government support for INCEHSA alone has reached more than \$100 million.<sup>5</sup>

***\* Excerpt from Greenberg and Traurig, Legal Analysis, page no. 2 and 3***

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<sup>5</sup> In 2002, the Government forgave an \$8 million tax liability of INCEHSA: a decision later declared illegal by the Anti-Corruption Commission. INCEHSA's auditing firm was also implicated in the report. These are the same auditors who in 2004 conducted a due diligence investigation of CEMAR. And in October 2003, the Government granted an illegal extension of its loan to IPM originally funded for the privatization of INCEHSA; despite the fact that the loan had been in default for over five years, according to a legal opinion by the Office of the Attorney General of Honduras.





GOH Reports on Predatory Pricing  
with Military Cement Co.  
(Predatory Pricing by the cement duopoly)

The textbook definition of predatory pricing is the lowering of prices by a monopolist (or by oligopolists in concert), without regard to costs of production, in order to drive a competitor from the market, with the losses then recouped by price increases once the scheme succeeds.

Predatory pricing is unfair because both its intent and its effect are to reduce competition to the detriment of consumers. What CENOSA and INCEHSA did to CEMAR is a perfect illustration of this pernicious practice.

In 2003 and early 2004, before CEMAR's production facilities came on-line, the price of a metric ton of cement in Honduras was approximately \$88.24 At the factory gate. CEMAR began commercial sales in September 2003. Between that time and February 2004, when CEMAR, unable to compete with the predatory prices and unable to overcome the other hurdles erected by the Government of Honduras, abandoned its efforts, the duopoly lowered prices to \$39.48 (a reduction of 55.3%), and openly threatened further cuts to \$13.82 (84.3%).

After the threat of having to compete with CEMAR was eliminated, the cartel members restored their prices to where they had been, reaching \$89.86 in August 2004. There was no market factor- - no shortage of raw materials, no sharp change in consumption- - that could account for such rapid and dramatic fluctuations.

In February 2007, the price of cement in Honduras was \$111.21/tonne, ex works. This represents a 281.7% increase over prices just three years before, and it is 805% higher than the prices the cartel announced that it was prepared to set if necessary to accomplish the goal of bankrupting CEMAR. The duopolists continue to enjoy the fruits of their illegal conduct to this day.

**\* Excerpt from Legal Analysis Greenberg and Traurig, page no. 5**











*Tegucigalpa, Honduras, Mon, Feb 16, 2009*

# ***EL HERALDO***

*(Front Page- Lead Article)*

## **US Investigates Honduras Expropriated Cement Firm [CEMAR]**

*Members of Congress inquire on the unjust closing of the CEMAR Plant in the State of Valle, and request explanations from the Honduras Government; however, there are no responses to US official letters. US law firm contends that the Honduras Government designed a scheme to eliminate Cemento America-CEMAR from the market.*

\* El Heraldo, and its affiliate, La Prensa, are Honduras' oldest and largest newspapers.





*El Herald*o, Tegucigalpa, Feb. 16, 2009

**[CEMAR CASE]**

**The US Investigates Expropriation of  
Cement Firm in Honduras** **The Greenberg Traurig  
Law Firm says the government designed a scheme to eliminate Cemento  
America from the [Honduras] market**

A group of US and Japanese businessmen never imagined that the fate of their cement plant, located in southern Honduras, would end up on the agenda on Capitol Hill.

Cemento America (CEMAR) began operations on October 6, 2003 in San Lorenzo, in the Department of Valle, launching its UNO brand of cement to the markets of the country's central, southern, and eastern regions. However, six months later, it closed operations after falling victim to a "price war" by the partially-state owned cement company Lafarge-INCEHSA.<sup>1</sup>

At the time, Cemento America made inroads offering cement in [standard] 42.5 kilogram bags at a price of 80 lempiras, in the Departments of Choluteca and Valle, six lempiras less than its competitors.

This provoked a "war" for the country's central, south, and eastern markets, until the price of [cement] fell to 45 lempiras in February 2004, a price reduction of 91.1 %, that is, 41 lempiras less.

CEMAR was owned by Taiheiyo Cement of Japan and the Cerna Group, based in the United States, and the investment amounted to \$28 million.

**Capitol Hill**

More than 130 US lawmakers, including Representatives and Senators, have been investigating the sudden shutdown of CEMAR for the past four years.

Among the legislators that are familiar with the case are Ileana Ross Lehtinen, Republican from Florida and Ranking Member of the House Foreign Affairs Committee; Elliot Engel, Democrat from New York, Chairman of the Western Hemisphere Subcommittee of the House Committee on Foreign Relations; Dan Burton, Republican from Indiana and Ranking Member of the Western Hemisphere Subcommittee; Charles Rangel, Democrat from New York, Chairman of the Ways and Means Committee; Dana Rohrabacher, Republican from California and Ranking Member of the Human Rights Committee; and John Conyers, Democrat from Michigan and Chairman of the Judiciary Committee .

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<sup>1</sup> Part-Military Cement Company



Many lawmakers have sent letters to the Honduran authorities, but have not been responded to in an adequate or timely manner, and now the case is being analyzed in the US Congress. This may lead the US Government to apply sanctions against Honduras over the participation by the partially state-owned cement company Lafarge-INCEHSA, 42% of whose shares are owned by the IMP Group [Institute of Military Provision of the Honduras Military].

## Expropriation

The renowned international law firm, Greenberg Traurig, investigated the case which was brought forth in the United States by Oscar Cerna, a US citizen who managed CEMAR during its brief operations.

*EL HERALDO*<sup>2</sup> has had access to the document prepared by the law firm, in which it concludes that the defunct firm of US and Japanese capital suffered an “indirect expropriation in violation of International Law.”

It adds that from this derives of Cerna’s complaint, “whose investment in a mercantile society—Cemento America, SA de CV—was expropriated from him by the Honduran Government in 2004.”

“The indirect expropriation, for which Mr. Cerna received no compensation whatsoever, required the execution of a scheme designed by the government—Honduras—to protect its own trade interests, as well as the personal interest of officials, in two companies that dominated, and still dominate, the domestic cement manufacturing industry.”

The Greenberg Traurig firm states that as a product of this, Cerna lost the total value of his investment, suffering economic losses and additional non-economic losses, for which he seeks retribution.

The investigation points out that during the entire construction phase of the plant, it was evident that some officials of the previous government had intentions to prevent Cemento America from operating in Honduras.

The document establishes that the provisions set forth in the Bilateral Investment Treaty [US-Honduras BIT 2001], signed by both countries were violated.

One of the clearest examples of government interference was the charges [criminal] presented by a local prosecutor (in Choluteca) against Oscar Cerna for tax evasion over the importation of [CEMAR] equipment, worth \$13 million, which entered the country through the Port of Henecan on July 21, 2001 and was authorized as a temporary importation, after paying a customs guarantee so as to ensure re-exporting within the following six months.

Teodoro Bonilla, Judge of [nearby city] Nacaome at the time, allowed the accusation and endorsed the seizure of equipment by the National Police, issuing an arrest warrant against Cerna.

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<sup>2</sup> Honduras’ largest newspaper.



Upon learning of this criminal prosecution of a U.S. citizen, U.S. Embassy officials contacted the appropriate court, and Bonilla [Judge], later determined that the accusation was baseless.

In addition, [the legal analysis] mentions the irregular participation of the Honduras IRS (DEI in Honduras), which after finding a tax liability of 1 million lempiras in an investment worth 600 million lempiras, maliciously withheld the resolution so that Lafarge-INCEHSA would pay less for the assets and liabilities of CEMAR.

### **Accusation**

Greenberg Traurig claims that "the Honduran government was not only aware of the scheme and its implementation, but it was also an active participant in it."

It adds that International law recognizes the notion of "Government Responsibility" for the acts carried out or the omissions tolerated by the agents or representatives of governments, as well as by governments themselves.

"The investment carried out in Honduras by US citizen Oscar Cerna was stripped from him without legal justification and without him receiving due compensation," reads the investigation of the law firm, which was also circulated among influential members of the U.S. Congress.

Due to all the previous reasons and because it is a question of justice, equity, and rights, demands should be made on the Honduran Government to award restitution to Mr. Cerna for the value of his investment, as well as compensating his losses.



# El Herald

*La verdad en sus manos*



HOY GRATIS  
ZONA DEPORTIVA

## EUA investiga si el país expropió cementera

EXCLUSIVA  
El Herald

Congresistas y senadores indagan cierre intempestivo de la planta que estaba en Valle y piden al gobierno explicaciones, pero aquí nadie contesta cartas. Firma de abogados de EE UU dice que gobierno diseñó una trama para sacar del mercado a Cemento América (Cemar) **PÁGS. 2 Y 3**

COMENTE  
www.elheraldo.hn

## Dramático relato de sobreviviente de los Zetas

EXCLUSIVA  
El Herald

Hondureño describe las torturas de grupos mexicanos **PÁGS. 66 Y 67**

**PAÍS 20**  
"Los Patricios" deben dedicarse a gobernar: Lara

**CONTRA 68**  
Venezuela dice "sí" a reelección indefinida



**ECONOMÍA 22**

**Gobierno se dispara en deuda interna**

12 mil millones, el más alto en una década

**PAÍS 4**

**Avión de la DEA 'escanea' el país**



**< SUCEOS 65**  
Acribillan a director del INA en Olancho

**METRO 28 Y 29**  
Vecinos compran motocicleta para frenar violencia



**MICROEDITORIAL**

*Violencia y acciones*

La administración Zelaya nunca entendió ni dimensionó el problema de la inseguridad ciudadana. No es con palabras ni reflexiones etéreas que se combate a los delincuentes. Además de la ausencia de una estrategia y de un plan de seguridad ciudadana, la sociedad ve la complacencia, la debilidad y hasta la tolerancia. ¡Señores, todavía tienen tiempo para actuar: les quedan diez meses, hagan algo!





## AL FRENTE

CASO CEMAR

# EE UU investiga expropiación de cementera en Honduras

Firma de abogados Greenberg Traurig dice que gobierno diseñó una trama para sacar del mercado a Cemento América

1/3

Tegucigalpa. Un grupo de empresarios americanos y japoneses jamás imaginaron que el destino de su planta cementera instalada en el sur de Honduras terminaría en la agenda del Ca-

jo de EE UU. Cemento América (Cemar) inició operaciones el 6 octubre de 2003 en San Lorenzo, Valle,

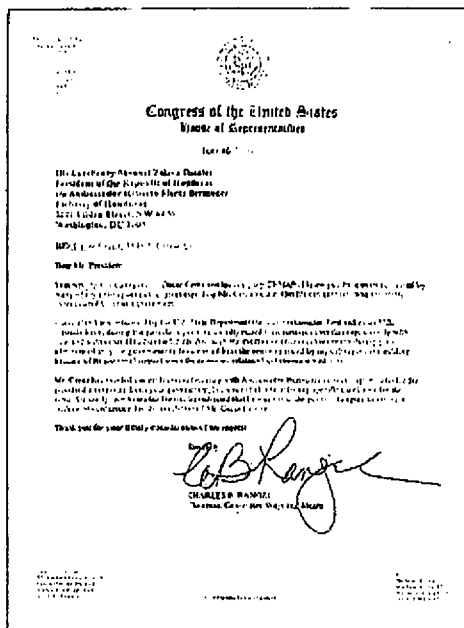
## LAS CIFRAS

**43** MILLONES de bolsas de 42.5 kilogramos será la producción nacional de cemento gris durante el presente año.

al lanzar cemento Uno al mercado de la región centro, sur y oriente del país, pero seis meses después clausuró actividades al ser víctima de la "guerra de precios" de la semiestatal Lafarge-Incehsa.

En aquel entonces, Cemento América incursionó con una presentación de cemento gris, en una bolsa de 42.5 kilogramos, a un precio de 80 lempiras en los departamentos de Choluteca y Valle, seis lempiras menos que su competencia.

Lo anterior provocó una "pelea" por el mercado centro-sur-oriental del país, hasta llegar a cotizarse ese material de construcción en 45 lempiras



Carta enviada por el congresista Charles B. Rangel al presidente Manuel Zelaya Rosales en junio del año pasado.

en febrero de 2004, mostrando una reducción de 91.1 por ciento, o sea 41 lempiras menos.

Cemar era propiedad de Taiheyo Cement de Japón y del Grupo Cerna, de Estados Unidos, en la que se invirtieron casi 28 millones de dólares.

El capitolio  
Más de 130 legisladores estadounidenses, entre representantes y senadores, vienen investigando desde hace cuatro años el cierre intempestivo de Cemar. Entre los congresistas que conocen el caso están Ileana

Ross Lehtinen, republicana de La Florida y jefa de la Minoría de la Cámara de Representantes; Elliot Engel, demócrata de Nueva York, quien preside el Subcomité del Hemisferio Occidental del Comité de Relaciones Exteriores de la Cámara de Representantes; Dan Burton, republicano de Indiana y jefe de la Minoría del Subcomité del Hemisferio Occidental; Charles Rangel, demócrata de Nueva York, quien preside el Comité del Presupuesto; Dana Rohrabacher, republicana de California y jefa de la Minoría del Comité de Derechos Humanos; John Conyers, demócrata de Michigan y presidente del Comité de Justicia.

Una gran parte de legisladores ha enviado cartas a las autoridades hondureñas, las que no respondieron en tiempo en forma y ahora el caso será ventilado en el Congreso de Estados Unidos, lo que puede llevar al gobierno norteamericano a aplicar sanciones en contra de Honduras por la participación de la semiestatal Lafarge-Incehsa, de la que el Grupo IPM es propietario del 42% de las acciones.

Expropiación  
La conocida firma internacional de abogados Greenberg Traurig investigó el caso denunciado en EE UU por el ciudadano americano Óscar Cerna, quien gerenció Cemar



## CRONOLOGÍA DE LOS HECHOS

2001

MARZO: Taiheyo Cement y Grupo Cerna inician la construcción de la planta en San Lorenzo, Valle.

2002

PLANTA: Se inicia en San Lorenzo, Valle la construcción de la planta cementera.

2003

OPERACIONES: A modo de prueba se abre al mercado el cemento Uno.

2004

EXPROPIACIÓN: Firma internacional de abogados Greenberg Traurig investiga el caso.



El Heraldillo, lunes 16 de febrero de 2009

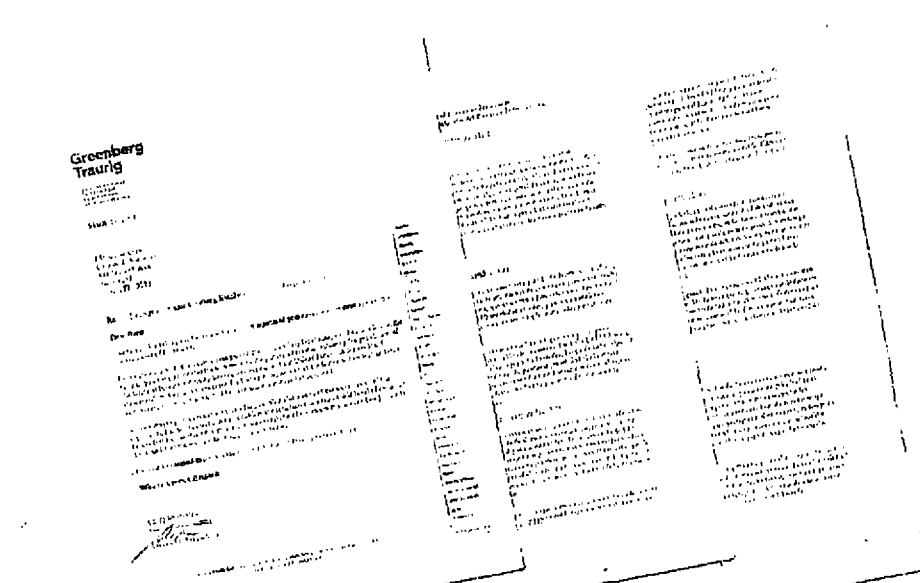
## COMPETENCIA

El mercado del cemento en Honduras estaba controlado por dos empresas hasta fines de 2003. En menos de seis meses, Cemsa suplió a un 15% del mercado local, ya que varios sectores de la industria de la construcción calificaron de muy buena la calidad del cemento Uno. La producción de cemento continúa en manos de un oligopolio con la complicidad del Estado.

3



que la calidad del cemento siempre ha estado en duda por su rendimiento.



La firma de abogados Greenberg concluyó que hubo una expropiación indirecta y por eso se debe proceder contra el gobierno de Honduras.

en sus cortas operaciones.

EL HERALDO tuvo acceso al documento elaborado por ese bufete, en el que concluye que lo ocurrido a la desaparecida empresa de capital japonés-estadounidense fue una "expropiación indirecta en violación del Derecho Internacional". Agrega que de eso deriva el reclamo de Cerna, "cuya inversión en una sociedad mercantil -Cemento América, SA de CV- le fue expropiada por el gobierno de Honduras en el año 2004.

"La expropiación indirecta, por la cual el señor Cerna no recibió compensación alguna, requirió de la ejecución de una trama diseñada por el gobierno -Honduras- para proteger sus propios intereses comerciales, así como los de funcionarios a título personal, en las dos compañías que dominaban, y aún dominan, la industria doméstica de manufactura de cemento".

La firma Greenberg Traurig

asegura que producto de ello, Cerna perdió el valor total de su inversión, sufriendo pérdidas económicas y no económicas adicionales, las que pretenden le sean compensadas. La investigación señala que durante todo el proceso de instalación de la planta fue evidente la intención de algunos funcionarios del gobierno anterior por evitar que Cemento América operara en Honduras.

El documento establece que se violaron las disposiciones establecidas en el convenio de seguridad de inversiones, firmado entre los dos países.

Una de las intervenciones más claras fue la acusación interpuesta por la Procuraduría Regional de Choluteca en contra de Óscar Cerna por el delito de evasión fiscal por la importación del equipo valorado en 13 millones de dólares, el que fue ingresado al puerto de Henecán el 21 de julio de 2001 y retirado como una importación temporal, previa caución aduanera a

**EL PERIL**  
Capital: Cemsa era de capital estadounidense y japonés. Inversión: En la primera fase se destinaron \$27.6 millones y en siete años se proyectaba \$430 millones más. Mercado: El sur, centro y oriente del país, y exportar a El Salvador y Nicaragua.

fin de garantizar la reexportación dentro de los seis meses siguientes.

El entonces juez de Letras de Nacaome, Teodoro Bonilla, admitió la acusación y avaló la incautación del equipo por parte de la Policía Nacional, procediendo a emitir una orden de captura en contra de Cerna. Ante esa demanda en contra de un ciudadano estadounidense, funcionarios de la embajada Americana se personaron a los tribunales correspondientes, determinando, Bonilla, posteriormente que la acusación

carecía de méritos.

Asimismo, se menciona la participación irregular de la Dirección Ejecutiva de Ingresos (DEI), que después de encontrar un ajuste de un millón de lempiras en una inversión de 600 millones, maliciosamente engavetó la resolución para que Lafarge-Incehsa ofertara menos por los activos y pasivos de Cemsa.

**Acusación**  
Greenberg Traurig sostiene que "el gobierno de Honduras no solo estaba al tanto de la trama y de su implementación, sino que también fue participante activo en la misma".

Agrega que el derecho internacional reconoce la noción de la "responsabilidad del Estado" por los hechos realizados o las omisiones toleradas por los agentes o representantes de los gobiernos, así como por los gobiernos mismos.

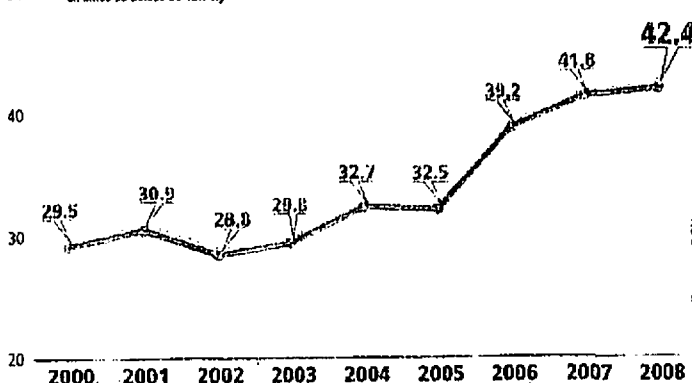
"La inversión realizada en Honduras por el ciudadano estadounidense Óscar Cerna le fue despojada sin justificación legal y sin que él recibiese la compensación debida", reza la investigación de la firma de abogados, la que también ha sido distribuida entre influyentes miembros del Congreso de Estados Unidos. Por todo lo anterior y por tratarse de una cuestión de justicia, equidad y de derecho, debe exigirse al gobierno de Honduras restituir al señor Cerna el valor de su inversión, así como compensarle las pérdidas."

Redacción - El Heraldillo  
diario@elheraldillo.hn



## PRODUCCIÓN NACIONAL DE CEMENTO GRIS

50 En miles de bolsas de 42.5 kg





*Tegucigalpa, Honduras, Tuesday, Feb 17, 2009*

# ***EL HERALDO***

*(Front Page- Lead Article)*

## **Cement Firm [CEMAR] Bankrupted to Protect Oligopoly**

*Former government officials in collusion with cement industry businessmen bankrupted Cemento America [CEMAR]. Irregularities documented by US officials.*

**\* El Herald, and its affiliate, La Prensa, are Honduras' oldest and largest newspapers.**



*El Heraldo*, Feb 17, 2009.

## CEMAR CASE

# Government Bankrupted Cement Firm [CEMAR] to Protect Oligopoly

*The case was transferred to the US Department of Justice for review.  
Former Ambassador Larry Palmer attested to the House of Representatives the claims of indirect expropriation*

The renowned U.S. Greenberg Traurig Law Firm concludes in its investigation that the Government of Honduras “was the victim of a manipulation by the cement duopoly” to indirectly expropriate the company Cemento America (CEMAR), in early 2004.

*El Heraldo* has had access to the document drafted by the aforementioned law firm, in which it confirms the participation of several former officials, who colluded with businessmen linked to the production and sale of gray cement in the country.

The [government] agencies mentioned include the Honduras IRS (DEI in Honduras), the Honduras Attorney General Office, the Ministry of Industry and Commerce (SIC), the Prosecutor Office, the National Police, and the local Court of the Department of Valle, among other public institutions.

The Honduran Government is being accused over its participation in the IMP [Institute of Military Provision of the Honduras Military] Group, which owns 42% of the shares of Lafarge-INCEHSA [Part-Military Cement Company], the company that acquired CEMAR after a series of actions planned in government agencies, confirmed the investigation.

Cemento America invested nearly \$28 million in the construction and installation of a cement plant for (gray) cement in San Lorenzo, Valle, which operated for barely six months; after it went bankrupt over the “price war” begun by the two companies that operate in the country.

When CEMAR launched the Uno brand [CEMAR product] of gray cement to the central, southern, and eastern markets in October 6, 2003, the price per bag was 80 lempiras, six lempiras less than the competition.

This spurred the partially stated owned cement company Lafarge-INCEHSA to dramatically lower the price of the bag of 42.5 kilograms to as low as 46 lempiras in February 2004, granting its distributors subsidies on the shipping of the product, an act replicated by the other company operating in the northern region of the country.

### Intervention

The investigation of Greenberg Traurig documents a series of actions by [government] officials against the operations of CEMAR.





Among the questionable actions are the audits performed by Honduras IRS personnel, and the malicious delayed of the [tax auditing resolutions] results and the final estimates of the taxes owed.

Others include the accusations of the local prosecutor in Choluteca and the actions carried out by the Court of Nacaome, Valle.

"The conspiracy to drive CEMAR to bankruptcy and ensure it was unsuccessful in its attempt to reduce the market share of its competitors combined a series of mechanisms, each of which in itself would be sufficient, and all together are more than adequate, to be classified as an indirect expropriation in legal matters," said the law firm.

It highlights that among the said elements was a well-carried out campaign of predatory pricing of the cement manufactured by the members of the duopoly.

Another irregular act pointed out was the interference in the registration of property rights, as CEMAR had the exclusive right to use the words that make up its official company name, that is Cemento America; yet, the other company from the northern region tried to register the brand, with the government's approval.

### **The Complaint**

The case is being discussed in the US Congress and other channels in that country due to the complaint presented by US Citizen Oscar Cerna, who acted as the manager of CEMAR.

The accusation is based on the fact that Honduras signed several treaties that guaranteed full protection to foreign investment [U.S-Honduras Bilateral Investment Treaty, BIT 2001].

In 2001, the governments of Honduras and the United States signed the Treaty on the Encouragement and Reciprocal Protection of Investment. According to that Treaty, Oscar Cerna's investment was a "protected investment" as it was the "investment of a national...from one party in the territory of the other party."

Greenberg Traurig claims that "the fact that CEMAR was constituted as a company in Honduras in no way affects the application of those dispositions of the treaty, and thus Honduran legislation, which forbids the direct or indirect expropriation of protected investments."

In other words, "it was the investment made by Mr. Cerna which was indirectly expropriated, being duly legitimized to invoke the treaty as an applicable legal tool so as to protect such measure," highlighted the law firm.

### **US Congress**

The case has become well-known among more than a hundred US lawmakers—Senators and Representatives—who urged former Secretary of State Condoleezza Rice to transfer it [the case] to the Department of Justice for its review.

The untimely shutdown of the cement firm of US and Japanese capital has been denounced in the US Congress and other US [government] institutions, as its main shareholder is a U.S. citizen Oscar Cerna.

The Senate and the House of Representatives have been investigating the case in recent years.



Members of Congress like Eliot L. Engel and Dan Burton, among others, urged former Secretary of State Condoleezza Rice to transfer the case to the Department of Justice for its review.

In addition, Larry L. Palmer, the ambassador accredited in Honduras in the period 2002-2005, the time during which the events unfolded, testified in July 14, 2008 before the House of Representatives on the illegal expropriation of CEMAR.

Several US Senators and Representatives have sent letters to the Government of Honduras urging resolution on the case, without having received any response so far, so the final decision may be made in upcoming weeks in the U.S. Congress.

### **Honduras Congresswoman Provides Evidence to the Prosecutor's Office against Corruption**

The evidence that sustains an alleged criminal action in the elimination of the company Cemento America, S.A. de C.V. (CEMAR), producer of Cemento Uno, is in the custody of the Prosecutor's Office against Corruption.

Doris Gutierrez, a Congresswoman from the Democratic Unification Party (UD), provided evidence on the [CEMAR] case and urged the verification of actions that could represent crimes allegedly committed by individuals and former officials of the Honduras government [in the Administration of President Ricardo Maduro, 2002-2006].

"Cemento Uno came out to the market in October 2003; immediately, the directors of the Honduran cement oligopoly, mainly Lafarge-INCEHSA (partially stated owned, 42% owned by the IMP- Institute of Military Provision of the Honduran Military) planned the elimination of Cemento Uno, allying themselves with the Palao William Auditing Firm, which colluded with Honduras government official working in the Ministry of Finance and with directors and auditors of the Honduras IRS (DEI in Honduras)", says the report.

"There is a timeline of the conspiracy between the Honduras IRS, IMP, Lafarge-INCEHSA and the firm Palao William to eliminate CEMAR and in consequence the elimination of Cemento Uno, damaging the consumer, the construction industry, the national economy, and foreign investment," it adds.

The Congresswoman delivered to the Prosecutor's Office documentary proof and a recording on a compact disc [and its transcription] in which allegedly "the plot to illegally eliminate [CEMAR] the cement company is manifested," in a conversation between an executive of Lafarge-INCEHSA and a cement distributor.



# El Herald

*La verdad en sus manos*



HOY GRATIS  
REVISTA D&N

## Para proteger oligopolio quebraron cementera

EXCLUSIVA  
El Herald

Ex funcionarios, coludidos con empresarios ligados a la industria del cemento, llevaron a la quiebra a la Cementera América. EUA documentó irregularidad PÁGS. 2 Y 3

SUCESOS 52  
Pobladores  
golpean  
a violador  
de una niña



ECONOMÍA 22  
El diésel era  
más barato  
hace 4 años

ZONA 54 Y 55  
Ramón Núñez  
confía en que  
se le ganará a  
Trinidad y Tobago



^ PAÍS 8

### Sigue crisis de matrícula en la Normal Mixta

Registros se llevaron  
a otro colegio

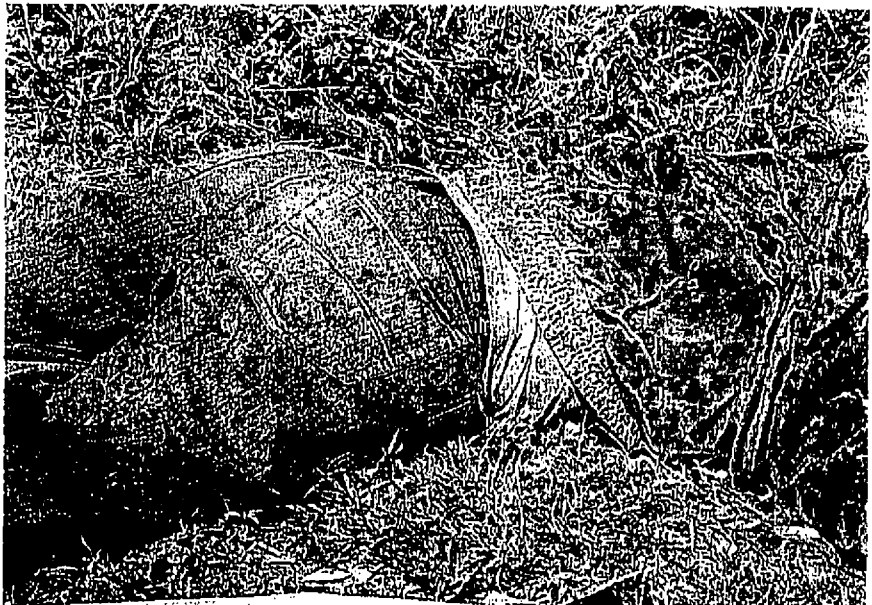
PAÍS 4

### Confirmado: avión es de la DEA, dicen FF AA

MICROEDITORIAL

### Justicia propia

Lo ocurrido en San Pedro Sula, donde un ladrón fue linchado por vecinos, y en Tegucigalpa, donde un violador de menores solamente escapó a la ira popular gracias a la oportuna intervención de la policía, son peligrosos síntomas de que la gente empieza a tomarse la justicia por su propia mano, ante la inacción de las autoridades contra la creciente criminalidad.



**Vecinos matan a ladrón.** Linchan a delincuente cansados de inseguridad y falta de autoridad en SPS. sucesos 52

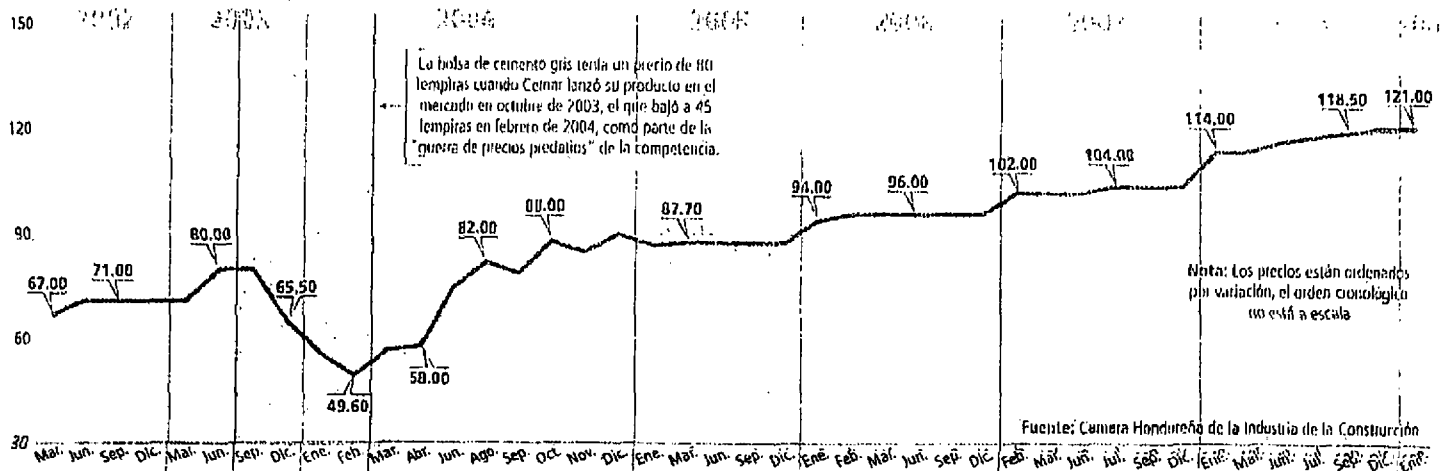


# AL FRENTE

El Heraldillo, martes 17 de febrero de 2009

## COMPORTAMIENTO DE LOS PRECIOS AL CONSUMIDOR DE LA BOLSA DE CEMENTO GRIS DE 42.5 KILOGRAMOS EN TEGUCIGALPA

(En lempiras por bolsa de 42.5 kg, incluye ISV)



### ■ CASO CEMAR ■

## Gobierno quebró cementera para proteger oligopolio

Caso fue transferido al Departamento de Justicia de EE UU para revisión. Ex embajador Larry Palmer confirmó ante la Cámara de Representantes la denuncia de expropiación indirecta

EXCLUSIVA  
El Heraldillo

2/3

Tegucigalpa. La conocida firma de abogados estadounidense Greenberg Traurig concluye en su investigación que el gobierno de Honduras "fue víctima de la manipulación del duopolio cementero" para expropiar indirectamente a la empresa Cemento América (Cemar), a principios de 2004.

EL HERALDO ha tenido acceso al documento elaborado por el citado bufete, en la que se confirma la participación de varios ex funcionarios coludidos con empresarios ligados a la producción y comercialización de cemento gris en el país. Entre las instituciones señaladas están la Dirección Ejecutiva de Ingresos (DEI), la Procuraduría General de la República (PGR), el Ministerio de Industria y Comercio (SIC), el Ministerio Público, la Policía Preventiva

y los tribunales de justicia del departamento de Valle, entre otras instancias públicas.

El gobierno hondureño es acusado por su participación en el grupo IPM, que posee el 42% de las acciones de Lafarge-Incehsa, empresa que adquirió Cemmar después de una serie de acciones urdidas desde varias oficinas del Estado, confirma la investigación.

Cemento América invirtió casi 28 millones de dólares en la construcción y en la instalación de una planta procesadora de cemento gris en San Lorenzo, Valle, la que apenas operó seis meses, después que se declarara en bancarota por la "guerra de precios" iniciada por las dos empresas que funcionaban en el país.

Cuando Cemmar lanzó el cemento gris marca Uno al

### CRONOLOGÍA

Oct/2003. Precio de la tonelada de cemento es de 88.24 dólares en planta.

Feb/2004. Lafarge-Incehsa baja el valor de la tonelada a 39.48 dólares.

Feb/2008. La tonelada de cemento gris en planta cuesta alrededor de 120 dólares.

sur-oriente, el 6 de octubre de 2003, el precio por bolsa era de 80 lempiras, seis lempiras menos que la competencia. Lo anterior provocó que la semi estatal Lafarge-Incehsa bajara estrepitosamente hasta 46 lempiras la bolsa de 42.5 kilogramos, en febrero de 2004, otorgando a sus distribuidores subsidios al flete del producto, lo que también repitió la otra empresa que opera

en la zona norte del país.

### Intervención

La investigación de Greenberg Traurig documenta una serie de acciones de funcionarios en contra de las operaciones de Cemmar. Entre las actuaciones cuestionadas destacan las auditorías practicadas por personal de la DEI y la entrega tardía de los resultados y la estimación final

## Diputada de UD aporta pruebas ante Fiscalía contra la Corrupción

Tegucigalpa. Las pruebas que sustentan una presunta acción delictiva en la desaparición de la empresa Cemento América, S.A. de C.V. (Cemar), productora de Cemento Uno, se encuentran en poder de la Fiscalía contra la Corrupción.

La diputada de Unificación Democrática, Doris Gutiérrez, aportó medios probatorios sobre este caso y pide que se verifiquen hechos constitutivos de delitos presuntamente cometidos por funcionarios del anterior gobierno y particulares. "Cemento Uno salió al mercado en octubre del año 2003,



inmediatamente los ejecutivos del oligopolio cementero hondureño, principalmente Lafarge-Incehsa (empresa semiestatal, 42% propiedad del IPM de las Fuerzas Armadas de Honduras) planificaron la destrucción de Cemento Uno, aliándose con la firma auditora Palao William, quienes se coludieron con funcionarios del Estado de Honduras que se desempeñaban en la Secretaría de Finanzas y con directores y auditores de la Dirección Ejecutiva de Ingresos (DEI), cita la denuncia. "Se presenta una cronología de la confabulación de la DEI,

IPM, Lafarge-Incehsa y la firma Palao William para destruir a Cemmar y en consecuencia el desaparecimiento del mercado de Cemento Uno, en perjuicio del consumidor, la industria de la construcción, la economía nacional y la inversión extranjera", añade. La congresista entregó a la Fiscalía pruebas documentales y una grabación en disco compacto en que supuestamente se "pone de manifiesto la trama para cerrar ilícitamente la empresa cementera", en que conversan un ejecutivo de Lafarge-Incehsa con un vendedor de cemento.





## JUSTICIA

## LAS PRUEBAS

1994 16, 200

The Honorable Committee on  
Governmental Affairs  
U.S. House of Representatives  
Washington, D.C. 20540

As Head of the  
Department of  
Education and  
Secretary

**Administrative Summary**

We are writing you today to let you know that the FBI, the U.S. courts, and the Attorney General have been notified that you have been arrested. We are also notifying you that you have been charged with the crime of **Obstruction of Justice**. This is a very serious crime and you should be very careful in your response to this letter. It is important that you understand the charges against you and the consequences of your actions. You should consult with a lawyer as soon as possible to discuss your rights and the best way to handle this situation. The FBI is currently investigating this case and we are working to ensure that all legal procedures are followed. We will keep you informed of any further developments in the case.

Very truly yours,  
Special Agent in Charge

Enclosure

[illegible]

Andersson, K. (1993). *Enkelt*

44.70

The House did not hold a vote on the bill.

Dear Madam Governor

As the President of the American People's Party, I have been elected after a campaign that was both successful and difficult. I am proud to represent the American people and to work for their best interests. I have been elected to the position of President of the American People's Party, and I am committed to serving the people of the United States. I have been elected to the position of President of the American People's Party, and I am committed to serving the people of the United States. I have been elected to the position of President of the American People's Party, and I am committed to serving the people of the United States.

[www.ehri.edu.hk](http://www.ehri.edu.hk)



*Tegucigalpa, Honduras, Wed, Feb 18, 2009*

# ***EL HERALDO***

*(Front Page- Lead Article)*

## **Cement Firm [CEMAR] Lost 600 Million**

*The cement oligopoly only allowed it to operate for six months. US after the responsible parties.*

\* El Heraldo, and its affiliate, La Prensa, are Honduras' oldest and largest newspapers.



**El Herald**o, Tegucigalpa, Feb 18, 2009

[CEMAR CASE]

## Cement Firm Lost Investment of \$27.4m

**In the weeks ahead, the US Government may take actions against Honduras**

The 600 million lempiras —\$27.4 million— that CEMAR invested in four years to build a cement plant in San Lorenzo, Valle, was lost in barely six months.

Thus reveals the legal analysis of the US law firm Greenberg Traurig, which performed the investigations of the “Expropriation Case Related to Honduras,” that concluded on 11 March 2008.

The document has been circulated by executives of the former company Cemento America S.A. de C.V. to more than a hundred US lawmakers, between Representatives and Senators, who have sent a number of letters to the Honduran Government to solve the case, without having obtained any response to date.

### **Interference by Taxing Authorities**

The partners of CEMAR —Taiheiyo Cement of Japan and Grupo Cerna of the United States— charged that the conspiracy to drive the company [CEMAR] from the Honduran market was hatched from the Ministry of Finance and the Honduras IRS, during the administration of former President Ricardo Maduro [2002-2006].

The legal analysis of the US firm reveals that the auditors in charge of performing the due diligence —the accounting audit— of CEMAR (in accordance with the agreement signed to sell the company) were also the external auditors of the Institute of Military Provision (IPM) of the Honduras Military and the Honduran cement company (INCEHSA) a business relationship that dates back many years.

“Obviously, the objective of the auditing firm was to draft a report that allowed its precious client to lower the amount to pay for the company it was about to acquire.”

In the process, they had the collaboration of the taxing authorities [Honduras IRS] and their inexplicable refusal to issue a definitive ruling on the question of the taxes owed by Cemento America.

The delay of the fiscal authorities in confirming their original estimate of the amount of taxes owed, which was L 1,000,000 —(\$60,000 dollars)—, provided the auditors with the opportunity to “determine the existence” of a considerable amount in taxes to be paid, with no fear of being rebuked.

Greenberg Traurig points out that “thus, the buyer, refusing to acquire a company with such high debts, was able to swindle the moribund seller to the tune of some \$12 million (by demanding that the transaction be restructured as a sale of assets).”

Only after the transaction was closed, adds the legal analysis, did the taxing authority—the DEI [Honduras IRS]—admit that the debt was only 1,000,000 lempiras [\$60,000].

Obviously the Honduran Government benefited from this scheme, as a shareholder of the purchasing company. Thus, not only did it provide the medium for the fraud to be carried out, but also reaped part of the benefits.



It [the legal analysis] highlights that “the government acted deliberately to protect what seems to be its own commercial interests.”

## **Losses**

The investigation of Greenberg Traurig reveals that the amount of losses in Cemar’s investment is of \$27.4 million.

However, according to the Treaty Concerning the Reciprocal Encouragement and Protection of Investment, signed by the Governments of Honduras and the United States in 2001, the true magnitude of the damages caused is greater than that sum, as it is the fair market value of the expropriated good, determined immediately before the expropriation is consummated.

“In this case, the fair market price of Cemar in October 2003—regardless of the evaluation method used—would have been much greater than the amount of the investment required to launch its operations,” says the document.

The US lawyers who drafted the document, which is signed by Steven M. Schneebaum, consider that “the laws of Honduras grant Mr. Cerna the right to receive compensation for the non-economic losses suffered, including the violation of his human rights.”

## **Government [Honduras] Admits that Lafarge-INCEHSA Engaged in Anti-Competitive Practices**

**Accusations.** Six months after Cemar shut down operations, the Government of Honduras acknowledged that Lafarge-INCEHSA engaged in anti-competitive practices to drive Cemento America from the market.

This is proven by documents from the Honduras Attorney General’s Office [in 2004] and the Ministry of Industry and Commerce (SIC).

According to file 222-04 presented by [then] Attorney General, Sergio Zavala Leiva, against the legal challenge of Lafarge-INCEHSA, through its lawyers Enrique Flores Lanza and Mauricio Villeda Bermudez over the price fixing of the bag of cement at 70 lempiras, “the only effect of the executive order is to halt, stop, end the unlimited and unscrupulous abuse by the two cement companies, by preventing them from punishing the consumer beyond the levels they have reached with the exactions imposed on Honduran society, to date.”

The government approved Executive Decree 008-2004, dated 18 August 2004, in which it froze the price of cement at 70 lempiras per bag, due to the continuing increases for this material.

The document was presented on October 13, 2004 in a Honduras court, “and these considerations are made, your Honor, without taking into consideration the undeniable fact, derived from the very own and free will of the two cement companies regarding the anti-competitive practices they used against Cemento Uno [CEMAR’s brand], to drive to bankruptcy the ephemeral competition that entered the market, a stage in which they themselves lowered the price to the final consumer, to levels of 49.69 lempiras per bag, in February of this year, selling the product below cost, with predatory pricing, to strike dead, as they did, that advantageous competition that emerged to the benefit of consumers.”

On the other hand, the “Cement Investigation Report” carried out by a commission of the Prosecutor’s Office for Consumer Protection—Mirian E. Garcia Perez— and the SIC [Ministry of Commerce] —Nelson O. Parks and Jose Rufino Osorto—, on September 23, 2004, concludes that “before CEMAR participated in the market, the two existing companies had split the domestic market [geographically] and did not compete by price in the market, to the contrary, when one of them raised prices, the other automatically adopted the same measure.”





TEGUCIGALPA, HONDURAS • EDICIÓN 9472 • MIÉRCOLES 18 DE FEBRERO DE 2009 • AÑO XXIX • L. 6.00 • WWW.ELHERALDO.HN

# El Herald

*La verdad en sus manos*



HOY GRATIS  
MI SUPER DIARIO



**Los del Motagua andan bateando.** Jugadores se entretienen jugando béisbol tras los entrenos. ZONA 60-61

**SUCESOS 57**  
Pasajero mata a supuesto ladrón en bus urbano de la capital

**A 64**  
Jugadores del Real Juventud dan positivo



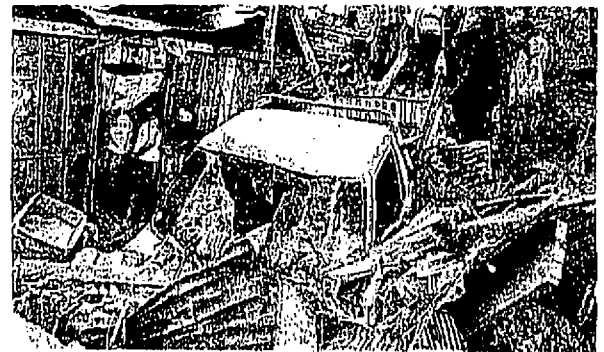
**VIDA 44 Y 45**  
Diseñadores y bandas en la Fashion Rock



## Cementera perdió 600 millones



Oligopolio solo la dejó operar seis meses. EUA tras actores de quiebra PÁGS. 2-3



**PAÍS 14**  
"Mel" insulta a quienes critican su relación con Chávez



**PAÍS 6**  
Elvin propone pacto de no confrontación

^ **SUCESOS 57**

## Motorista borracho cae en techo de casa

Una señora sobrevive de milagro y sale con lesiones en su cuerpo

**MICROEDITORIAL**

### Dopaje

Lo ocurrido en un equipo de la Liga Nacional, cuando en un domingo resultan positivos tres de sus jugadores en la prueba antidopaje y al siguiente otro número igual, sumado al castigo impuesto por la FIFA contra un seleccionado, debería llamar la atención de las autoridades a fin de investigar con mayor profundidad este asunto que tanto perjudica a cualquier disciplina deportiva.



## ■ CASO CEMAR ■

# Cementera perdió inversión de \$27.4 millones

En próximas semanas se conocerán las acciones que tomará gobierno de EE UU contra Honduras

EXCLUSIVA  
"El Heraldo"

3/3

Tegucigalpa. Los 600 millones de lempiras-\$27.4 millones-que Cemar invirtió en cuatro años para construir una planta de cemento gris en San Lorenzo, Valle, lo perdió en apenas seis meses. Así lo revela el análisis judicial del bufete estadounidense Greenberg Traurig, que realizó investigación del "Caso de expropiación relacionado con Honduras", la que finalizó el 11 de marzo de 2008.

El documento ha sido distribuido por los ejecutivos de la desaparecida empresa Cemento

América S.A. de C.V., a más de un centenar de congresistas de EE UU, entre representantes y senadores, quienes han enviado una cantidad de cartas al gobierno de Honduras para que resuelva este caso, sin obtener respuesta alguna hasta el momento.

### Intervención fiscal

Los socios de Cemar Taiheiyu Cement de Japón y Grupo Cerna de Estados Unidos denunciaron que la conspiración para sacar la empresa del mercado hondureño fue urdida desde la Secretaría de Finanzas y de la Dirección Ejecutiva de Ingresos, en el gobierno del ex presidente Ricardo Maduro.

El análisis jurídico de la firma estadounidense revela que los auditores a cargo de realizar el due diligence-auditoría contable de Cemar (de conformidad al contrato suscrito para vender la empresa) también eran los

auditores externos del Instituto de Previsión Militar (IPM) y de Industria Cementera Hondureña (Incelisa), relación de negocios que data desde hace varios años. "Obviamente, el objetivo de la firma de auditoría era elaborar un informe que le permitiera a su preciado cliente reducir el monto a pagar por la empresa que estaba en proceso de adquirir".

En el proceso contaron con la colaboración de las autoridades tributarias y su inexplicable negativa de emitir un fallo definitivo sobre la cuestión de los impuestos adeudados por Cemento América. El atraso de

### EL PERFIL

Cemar. Empresa de capital estadounidense y japonesa. Socios: Taiheiyu Cement de Japón y Cerna de EE UU. Expansión. Pretendía invertir \$430 millones en siete años. Mercados. Cemar buscaba vender cemento en Honduras, Nicaragua y El Salvador.

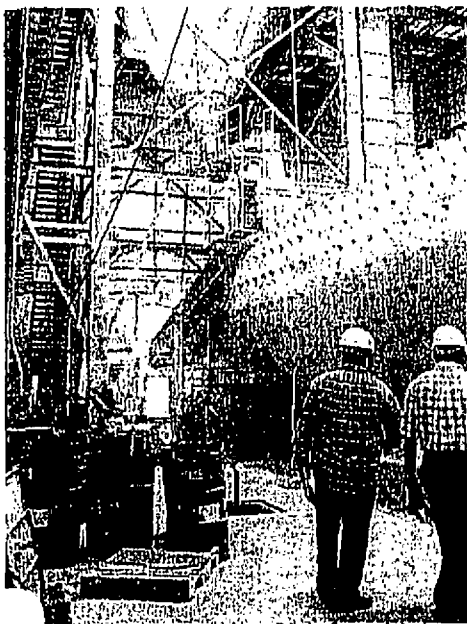
la autoridad tributaria para confirmar su estimación original del monto de impuestos adeudados, que era de L 1,000,000-60,000 dólares-, le brindó a las autoridades la oportunidad de "determinar la existencia" de un monto considerable en obligaciones tributarias sin pagar, sin temor de que se les rebatiese.

Greenberg Traurig señala que "así el comprador, rehusándose a adquirir una empresa con una deuda tan elevada, pudo embargar al moribundo vendedor al tono de unos \$12 millones (al exigir que la transacción ahora se reestructurase como una compra-venta de activos)". Solo después del cierre de la transacción, agrega el análisis jurídico, fue que la autoridad tributaria -la DEI- admitió que la deuda ascendía a 1,000,000 lempiras.

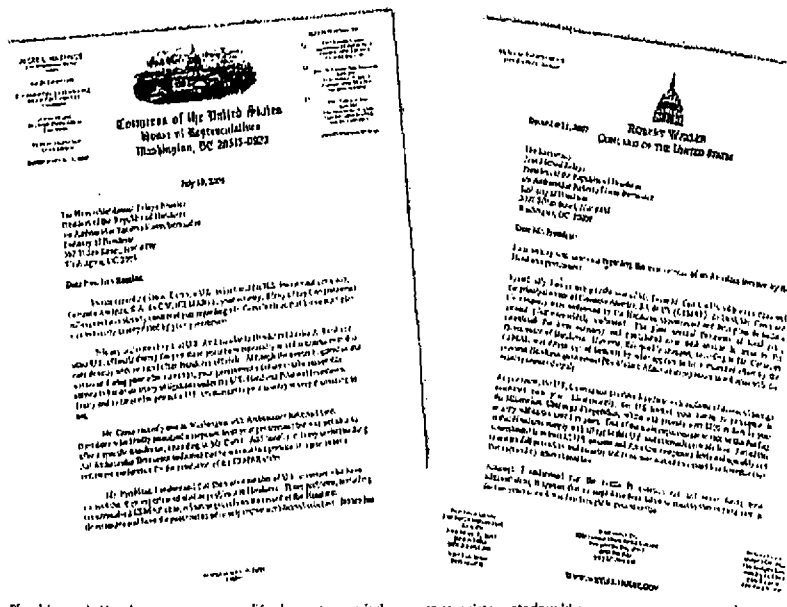
Obviamente que el gobierno de Honduras se benefició de este ardid por ser accionista



En apenas seis meses de operaciones, Cemar, con su Cemento Uno, había conquistado casi el 15% del mercado



Instalación del equipo estuvo dirigida por Taiheiyu Cement de Japón.



El gobierno de Honduras nunca respondió a las cartas enviadas por congresistas estadounidenses.







*Tegucigalpa, Honduras, Thursday, Feb 19, 2009*

# ***EL HERALDO***

*(Front Page- Side Article)*

## **The Prosecution Widens Investigation of Cement Firm Bankruptcy**

\* El Heraldo, and its affiliate, La Prensa, are Honduras' oldest and largest newspapers.





*El Heraldo*(Honduras), Feb 19, 2009

## CEMAR CASE AN INVESTIGATION INTO THE SCHEME TO BANKRUPT THE CEMENT FIRM

### **Confirming the Collusion between Lafarge-INCEHSA and Government Agencies**

The Office of the Public Prosecutor against Corruption has opened an investigation with the purpose of confirming an alleged plot to eliminate Cemento América, S.A. de C.V. (CEMAR), producer of Cemento UNO.

A series of news articles published by EL HERALDO brings to light how certain businessmen conspired with government officials to stop CEMAR operations in the country. The criminal complaint was ratified by a Congresswoman from the Democratic Unification Party, Doris Gutiérrez, who this past Monday arrived at the Office of the Public Prosecutor to present evidence of the alleged criminal action in which officials of the previous government and representatives of the company Lafarge- INCEHSA were involved.

"Cemento UNO [CEMAR] entered the market in October 2003, immediately the executives of the Honduran duopoly, mainly Lafarge-INCEHSA (part-state company, 42% property of the IMP [Institute of Military Provision] of the Honduras military) planned the elimination of Cemento UNO, allying with the auditing firm Palao William, who themselves colluded with Honduras officials, including the Minister of Finance, and with directors and auditors of the Honduras IRS, states the Congresswoman in her complaint.

The conspiracy to eliminate CEMAR was also of great detriment to consumers, the construction industry, the national economy and foreign investment. The documents and a compact disc recording of a conversation between an INCEHSA [Lafarge] executive and a [independent] cement salesman reveal how the company intended to "with premeditation lower the price of the cement in order to eliminate the incipient competition from Cemento UNO [CEMAR]".

### **Investigation**

The Office of the Public Prosecutor against Corruption attached this complaint to another that Gutiérrez filed, two years ago, in that case for improper favoritism towards Lafarge-INCEHSA. On that occasion she complained that the Government of Honduras lost more than 125 million lempiras in the form of reduction of taxes that the Honduras IRS granted to the referenced company; and for which are accused two former officials of the government agency, Rosa Girón and Walter Guevara. "The new evidence provided is in the process of being verified", stated the coordinator of the Office of the Public Prosecutor against Corruption, Fanny Martinez.



“There is a public prosecutor assigned to the case who will conduct such due diligence that it considers pertinent”, she added. One of them will be to authenticate the conversation that appears on the CD. “It remains to be seen what kind of information is on the CD, after which the experts will be named, so that the justice system can then proceed to obtain sworn statements from them, to authenticate the evidence in a legal manner”, explained the public prosecutor. After the analysis of the evidence and expert testimony, it will be determined if one or more crimes has been committed, as well as the identification of those who committed them.



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# El Herald

*La verdad en sus manos*



HOY GRATIS  
REVISTA CLICK

## Corrupción pone en riesgo cooperación

Cohep, Fosdeh y Consejo Anticorrupción urgen al gobierno tomar medidas para frenar corrupción pública. Inversión se aleja por escándalos **PÁGS. 2-3**



**PAÍS 18**  
Fiscalía amplía investigación sobre quiebra de cementera



**PAÍS 14**  
No se da abasto el hospital psiquiátrico  
Mario Mendoza

**SUCESOS 58**  
Rescatan a hondureño varado en la Antártida



## En investigación la trama de quiebra de cementera

Se confirmará colusión entre Lafarge-Incehsa y entes estatales

Honduras, 18.02.09 - Actualizado: 18.02.09 11:01pm - Redacción: [diario@elheraldo.hn](mailto:diario@elheraldo.hn)



La fiscal Fanny Martínez con la denuncia y las pruebas aportadas.

la empresa Lafarge Incehsa.

La Fiscalía contra la Corrupción inició acciones investigativas con el fin de confirmar la trama para desaparecer a la empresa Cemento América, S.A. de C.V (Cemar), productor de Cemento Uno.

En una serie de reportajes publicados por EL HERALDO se deja al descubierto cómo empresarios se habrían confabulado con sectores gubernamentales para que Cemar dejara de operar en el país.

La denuncia fue ratificada por la diputada de Unificación Democrática, Doris Gutiérrez, quien llegó el pasado lunes a la Fiscalía a presentar pruebas de la supuesta acción delictiva en que habrían incurrido funcionarios del anterior gobierno y representantes de

"Cemento Uno salió al mercado en octubre del año 2003, inmediatamente los ejecutivos del oligopolio cementero hondureño, principalmente Lafarge-Incehsa, (empresa semiestatal, 42% propiedad del IPM de las Fuerzas Armadas de Honduras) planificaron la destrucción de Cemento Uno, aliándose con la firma auditora Palao William, quienes se coludieron con funcionarios del Estado de Honduras, que se desempeñaban en la Secretaría de Finanzas y con directores y auditores de la Dirección Ejecutiva de Ingresos (DEI)", cita la denuncia de la diputada.

Con la confabulación para destruir a Cemar se produjo un perjuicio del consumidor, la industria de la construcción, la economía nacional y la inversión extranjera.

Las pruebas documentales y un disco compacto que contiene la conversación entre un ejecutivo de Incehsa con un vendedor de cemento quienes dejan entrever como la empresa bajaría "premeditadamente el precio del cemento a fin de desaparecer la incipiente competencia de Cemento Uno".

### Investigación

La Fiscalía contra la Corrupción anexó esta denuncia a otra que hace un par de años interpuso Gutiérrez por un supuesto favoritismo hacia Lafarge Incehsa.

En esa oportunidad se denunció que el Estado de Honduras perdió más de 125 millones de lempiras por





concepto de rebaja de impuestos que la DEI le hizo a la referida empresa, por el cual están acusados dos ex funcionarios de la entidad estatal, Rosa Girón y Walter Guevara.

"Se van a constatar las nuevas evidencias aportadas", manifestó la coordinadora de la Fiscalía contra la Corrupción, Fanny Martínez.

"Hay un fiscal asignado al caso y quien evacuará las diligencias que estime pertinentes", añadió.

Una de ellas será autenticar la conversación que aparece en el CD.

"Habría que ver qué tipo de información trae el CD, posteriormente se nombrarán los peritos para que sea el órgano judicial el que proceda al juramento de los mismos y obtener la prueba de una forma legal", explicó la fiscal.

Con el análisis de las pruebas documentales y periciales se determinará si se incurre o no en la comisión de uno o varios delitos, como la identificación de quienes los habrían cometido.

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**EL HERALDO.HN**

## **EDITORIAL OPINION**

*[February 13, 2006]* .

### **MONOPOLIES AND THE INCREASE TO THE PRICE OF CEMENT**

The announced increase to the price of cement, a product that in Honduras is manufactured and sold by a monopoly of once-state-owned companies, is a blow to the country. In addition to bringing damage to the construction industry – a massive employment generating activity –, the price increase puts at risk the housing development plans of the new Administration and makes it more difficult for the poor to build or repair their homes.

The privatization of the cement companies was questioned at their implementation because they were sold at extremely low prices and under extremely favorable payment terms.

Since then, an upward trend in the price of this product started and it did not stop until 2003, when a new company, Cementos de America, entered the Honduran market by offering its product at competitive prices.

Unaccustomed to free competition, the monopoly – integrated by Cementos del Norte and Industria Cementera de Honduras (Incehsa), this last one owned by multinational Lafarge – unleashed a *[predatory]* price war with the clear objective of bankrupting the new company until it was purchased by Lafarge.

Once the competition was eliminated, the cement monopoly began once again to increase prices. The new price increase is part of the torment that Hondurans are suffering as a result of the ties between powerful economic groups and the government, since most of the government administrations believe that they owe their duties to those who lend them political or economic support during the electoral campaigns, and not to the people.

Now, a paradox has emerged. It follows that one of the company that is part of the cement monopoly has ties to a businessman-politician who holds considerable power within the current *[Zelaya]* Administration.

But beyond any conflict of interest that may exist, the fact is that the price increase to such a vital product to the construction industry is also a serious blow to the government's plans to promote new housing projects at accessible prices to those who barely earn a minimum salary.

But not only that, for if the upward trend in cement prices were to continue, the government will also be unable to meet another of its promises, that of a massive generation of new jobs, because of the devastating effect the price increase would have on construction costs.

Definitely, as the President himself has said, actions must be brought against those monopolies and oligopolies "that do not allow the country to develop and move forward."



**El Herald**.hn

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**Alza del cemento y los monopolios**

El anunciado incremento en el precio del cemento, que en Honduras se produce y comercializa monopolícamente por dos empresas que una vez fueron estatales, representa un duro golpe para el país ya que, además de dañar a la industria de la construcción -una gran generadora de empleo-, pone en riesgo los planes de vivienda del nuevo gobierno y dificulta la construcción y reparación de sus casas a los más pobres.

La privatización de las cementeras en su momento fue cuestionada porque fueron vendidas "a precio de gallo muerto" y con excesivas facilidades de pago.

Comenzó, entonces, una tendencia alcista en el precio del producto hasta 2003, cuando entró al mercado hondureño la empresa Cementos de América (Cemar) que ofrecía el producto a precios más accesibles.

Desacostumbrados a la libre competencia, el monopolio conformado por Cementos del Norte e Industria Cementera de Honduras (Incehsa), de la transnacional Lafarge, desató una guerra de precios con el claro propósito de hundir a la nueva empresa, hasta que finalmente ésta fue comprada por Lafarge.

Ya sin competencia, el monopolio del cemento elevó de nuevo el precio del producto. El nuevo incremento del cemento es parte del calvario que sufren los hondureños a causa de la vinculación de los grupos de poder económico en la administración pública, porque la mayoría de los gobiernos creen que sus compromisos son con quienes les ayudan política o financieramente durante la campaña electoral y no con el pueblo.

En el momento actual se da la paradoja que una de las empresas que tienen el monopolio del cemento está vinculada a un político-empresario, con poder en el actual gobierno.

Pero más allá del conflicto de intereses que pueda existir en el asunto, está el hecho de que el aumento al precio del vital producto de construcción representa también un duro golpe a los planes gubernamentales para impulsar la construcción de viviendas que sean accesibles incluso para personas que sólo devenguen un salario mínimo.

No sólo eso, si continúa la tendencia alcista del cemento también se imposibilitará otra promesa del actual gobierno: la generación masiva de empleo, por el efecto devastador que tiene el incremento de costos en la industria de la construcción.

Definitivamente, como ya lo dijo el presidente de la República, debe

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actuar contra los monopolios y oligopolios que "no dejan que el país se desarrolle y salga adelante".

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**EL HERALDO.HN**

## **EDITORIAL OPINION**

*[May 10, 2008]*

### **CONSUMERS AND FREE MARKETS**

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In a free market system, even if prices are determined by the law of supply and demand, it is necessary to have in place government oversight mechanisms to avoid monopolistic and oligopolistic practices, which act to the detriment of both consumers and entrepreneurs as a result of unfair competition or other illegal or immoral practices.

If such mechanisms are necessary even in the most developed markets, then it follows that their implementation is quite justified in an economy with so many shortcomings as ours.

In this regard, the Competition Law, the main enforcement mechanism of which is the Commission for the Promotion and Defense of Competition, should prove a valuable contribution towards improving the investment climate and protecting vulnerable consumers, provided it does not suffer the same fate as other laws that have never been enforced, or other commissions that only served to increase bureaucracy and create numerous and unpractical procedures.

Unfair competition by one or more companies with the aim of eliminating another from the market may even give a false impression of being beneficial to consumers. That's exactly what happened during the "price war" unleashed about two years ago as a result of the operation of CEMAR, located in the South. The war ended when the new company was purchased by Lafarge-Incehsa. *[At that time]* a bag of cement sold for about 45 lempiras.

Afterwards, the cement companies – which were once owned by the Government of Honduras but were later sacrificed at the altar for the sake of neoliberalism – not only increased prices well above those in effect prior to the alleged competition, but one of them, Incehsa, unilaterally and unjustifiably increased prices last November 1<sup>st</sup>, and as a result the price of cement rose from 97 lempiras to 104 lempiras per *[45 kg]* bag. Because of a firm stance by the government the 6.39-lempira increase was eliminated – or at least suspended through December 31. According to an agreement *[between Incehsa and government officials]*, an opinion justifying or denying the price increase, which in any case should be made effective at the beginning of next year, is expected next week.

The Government must create, broaden, improve and promote all instruments that are necessary to foster sound competition and free-market development, not only to the benefit of investors and the national economy, but also of consumers, who up until now have left abandoned not only with regard to prices but also concerning weights and measures, and deceptive advertising.



**EL HERALDO, Feb 13, 2006**

## **EDITORIAL OPINION**

### **MONOPOLIES: THEIR INCREASE IN THE PRICE OF CEMENT**

The announced increase in the price of cement, a product that in Honduras is manufactured and sold by a monopoly of once-state-owned companies, is a blow to the country. In addition to bringing damage to the construction industry – a massive employment generating activity –, the price increase puts at risk the housing development plans of the new Administration and makes it more difficult for the poor to build or repair their homes.

The privatization of the cement companies was questioned at their implementation because they were sold at extremely low prices and under extremely favorable payment terms.

Since then, an upward trend in the price of this product started and it did not stop until 2003, when a new company, Cementos de America [CEMAR], entered the Honduran market by offering its product at competitive prices.

Unaccustomed to free competition, the monopoly – consisting of Cementos del Norte [CENOSA] and Industria Cementera de Honduras (INCEHSA), the latter owned by multinational Lafarge – unleashed a *[predatory]* price war with the clear objective of bankrupting the new company [CEMAR] until it was purchased by Lafarge.

Once the competition was eliminated, the cement monopoly began once again to increase prices. The new price increase is part of the torment that Hondurans are suffering as a result of the ties between powerful economic groups and the government, since most of the government administrations believe that they owe their duties to those who lend them political or economic support during the electoral campaigns, and not to the people.

Now, a paradox has emerged. It turns out that one of the companies that is part of the cement monopoly has ties to a businessman-politician who holds considerable power within the current *[Zelaya]* Administration.

But beyond any conflict of interest that may exist, the fact is that the price increase to such a vital product to the construction industry is also a serious blow to the government's plans to promote new housing projects at accessible prices to those who barely earn a minimum salary.

But not only that, for if the upward trend in cement prices were to continue, the government will also be unable to meet another of its promises, that of a massive generation of new jobs, because of the devastating effect the price increase would have on construction costs.

Definitely, as the President himself has said, actions must be brought against those monopolies and oligopolies “that do not allow the country to develop and move forward.”



**EL HERALDO, Ma**

## **EDITORIAL OPINION**

### **CONSUMERS AND FREE MARKETS**

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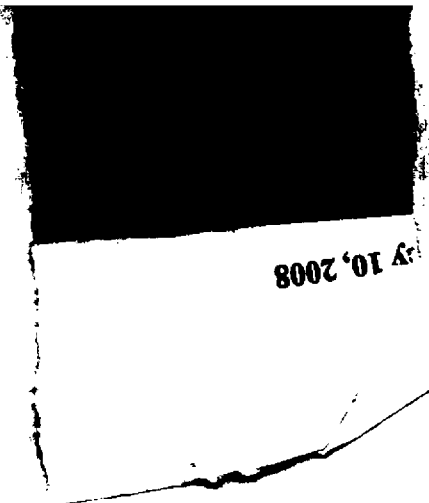
If such mechanisms are necessary even in the most developed markets, then it follows that their implementation is quite justified in an economy with so many shortcomings as our own.

In this regard, the Competition Law, the main enforcement mechanism behind the Commission for the Promotion and Defense of Competition, should prove a valuable contribution towards improving the investment climate and protecting vulnerable consumers, provided it does not suffer the same fate as other laws that have never been enforced, or other commissions that only served to increase bureaucracy and create numerous and impractical procedures.

Unfair competition by one or more companies with the aim of eliminating another from the market may even give a false impression of being beneficial to consumers. That's exactly what happened during the "price war" unleashed about two years ago as a result of the opening of CEMAR[U.S. investment in Honduras], located in the South. The war ended when the new company was purchased by Lafarge-INCEHSA [Part-Military Cement Company]. *[At that time]* a bag of cement sold for about 45 lempiras.

Afterwards, the cement companies – which were once owned by the Honduras government but were later sacrificed at the altar for the sake of neoliberalism – not only did they increased prices well above those in effect prior to the arrival of the new competition [CEMAR], but one of them, [Lafarge] INCEHSA, unilaterally and unjustifiably increased prices last November 1<sup>st</sup>, and as a result the price of cement rose from 97 lempiras to 104 lempiras per *[45 kg]* bag. Because of a firm stance by the government the 6.39-lempira increase was eliminated – or at least suspended through December 31. According to an agreement *[between Lafarge-INCEHSA and Honduras government officials]*, an opinion justifying or denying the price increase, which in any case should be made effective at the beginning of next year, is expected next week.

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# Who is Oscar Cerna

## **President**

**Cemar-Taiheiyo Corp. (Cemento Uno)**

**Tegucigalpa, Honduras**

**Telephone: 504-235-4187**

Oscar Cerna has served as President of Cemar-Taiheiyo Corp. since the company's formation in early 2000. Today, he oversees production of Cemar's "Cemento Uno" brand, from his office in the company's 450,000 MT grinding facility in San Lorenzo, Valle, Honduras.

"Cemento Uno," produced with the finest Japanese materials and technology, has been highly praised and warmly received in the market since the company commenced operations in the fall of 2003. Mr. Cerna's partner, Taiheiyo Cement Corp., is the largest cement company in Japan. The Cemar-Taiheiyo project in Honduras represents the very first investment by any Japanese company in the cement sector in Latin America.

The San Lorenzo location, on the Gulf of Fonseca, was chosen specifically for its accessibility to regional markets in El Salvador and Nicaragua, and the company will begin exporting to those markets in the near future.

Bringing the prestigious Taiheiyo Cement Corp. to Central America as his joint venture partner, and developing the \$25 million (USD) San Lorenzo facility, are only the latest of Mr. Cerna's many accomplishments in the cement industry.

Mr. Cerna's family-held Cerna Group has had operations in the cement, gypsum and derivatives industries since the 1940's. The group's holdings were originally centered in Nicaragua, but today are diversified throughout the region. The group experienced significant property confiscation in the 1980's, during the Sandinista administration. Since then, the Cerna Group has been a leader in negotiations with the U.S. Government for the repatriation of Nicaraguan properties to their former owners. Oscar Cerna himself continues to maintain a strong presence in Washington, D.C.

Mr. Cerna was born in Managua. While his childhood dream was to become an astronaut, his father encouraged him to participate in the family businesses. He obtained his degree in Economics and Finance at the University of Miami. After working on various family projects in the United States during the 1980's, Mr. Cerna's emphasis returned to Central America, where he now has over 15 years' experience in the planning and construction of cement plants in the region.



*Oscar Cerna, Cemar-Taiheiyo Corp. (Cemento Uno), President.*

From 1990-97, he served as Vice President and Secretary to the Board of Compania Nacional Productora de Cemento in Nicaragua (CANAL). During his tenure with CANAL, production and profits increased by more than 50%, and sales increased to over \$40 million (USD.)

In 1997 Cerna and his partners began construction of a 350,000 MT grinding plant in Nicaragua, which was completed and became operational in the summer of 1998, and was subsequently acquired by a leading multinational cement company.

Upon completion of that venture, Mr. Cerna became interested in a new site, on the Gulf of Fonseca in San Lorenzo, Honduras. This led to the successes enjoyed by Mr. Cerna today, as President of Cemar-Taiheiyo Corp. and its "Cemento Uno" brand.

And, Mr. Cerna has not entirely given up hope on his childhood dream of traveling to outer space. "If they start building on the moon one day," he says, "maybe I can help put a cement plant up there."

